



FHWA – Florida Division

and

Florida Department of  
Transportation

## Process Review On:

## Consultant Design Errors and Omissions



September 2010

Joint Review



# Consultant Design Errors and Omissions Review and Evaluation of Premium Costs

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## EXECUTIVE SUMMARY

Over the years, as legislation such as ISTEA, TEA-21, and SAFETEA-LU have increased transportation funding, the use of consultants has also increased. Today, consultants prepare approximately 70% to 80% of the projects let to contract by the Florida Department of Transportation (FDOT). With the continued growth in FDOT's Construction Work Program and limited personnel available to perform the work, the percentage of consultants used by the Department is expected to increase. While consultants are accountable for the technical accuracy and quality of their work, design errors and/or omissions (E&O) do sometimes occur. Depending on their significance, E&O may result in increased design, construction, and maintenance costs.

The process review was conducted in collaboration between the FHWA/Florida Division and the FDOT. The team visited three districts between February and May 2010. The review was based on the FDOT's Design Errors and Omissions policy and procedure 375-020-010c titled **"Identifying and Assigning Responsibility for Errors and/or Omissions by Design Consultant"** and was approved on October 10, 2004 (Appendix A, page 19). The basic intent of this procedure is to ensure adequate cost recovery by FDOT's E&O. The procedure provides a mean by which premium cost recovery can be obtained. More specifically, this process provides an avenue for measuring; ascertaining, identifying, documenting and tracking all E&O related matters.

Since the FHWA is responsible for ensuring the E&O process is in compliance with 23 CFR 635(a), the review also included several discussions with key FDOT personnel from the selected three districts to ascertain FDOT's premium costs recoveries and the understanding of the E&O provisions. The review team observed the FDOT's documentation on how they handled past and on-going processes related to premium costs and other related issues.

Based on our observations and discussions with the district staff (Appendix "A" page 19, the team concluded the following:

1. Inconsistencies exist in the application of the E&O procedures within the selected districts (E&O procedure section 2.3),
2. Inconsistencies exist in pursuit and recovery of premium costs by consultant E&O,
3. Miscommunication exist among the disciplines involved in the E&O process,
4. There is a lack of consistent process that could be used to track and notify the consultant of E&Os,
5. Premium cost recovery methods vary in each district:
  - (a) One district has successfully implemented the E&O policy and procedure and thus has successfully recovered Premium Cost
  - (b) One district was in the process of pursuing premium cost before being halted by their legal team;

- (c) Another district was continuously substituting premium costs with “Service-In-Kind” without identifying any premium cost below the thresholds: (\$10,000 for single occurrence & \$25,000 for multiple occurrences)

In fact, there is no section in the E&O’s policy and procedure that clearly defines the \$25,000 threshold at the district level. This has been adopted by few districts and it appears to be an unwritten policy which contradicts the current E&O policy.

In view of these variations in the Districts’ implementation of the E&O Policy, the Review Team submits the following recommendations to FDOT to adopt towards process improvement:

- Establish a better means of communication between the Construction Office and the Design Office,
- Apply consistency in administration and oversight of the E&O Policy among the districts,
- Conduct annual training on the E&O policy and procedures in light of case studies and lessons learned from reviewed projects,
- Establish a Supplemental Agreement Review Committee in each District to oversee all premium costs and design errors identified during construction.
- Develop guidance for the District in regards to “service in-kind” (otherwise, delete items from E&O policy). FDOT’s recently updated E&O policy does clarify the use of in kind service.
- (The review team strongly suggests) It is highly recommended that the FDOT discourage the thresholds that have been identified and applied in some districts since they are unwritten policies that do not fall under the E&O.
- Produce an annual report, which includes the closed projects with Supplemental Agreements or Work Orders identifying the design errors, premium costs and the action taken by each District. The report should also include the policy and steps taken by the Department to collect the money from the design consultants, and all lessons learned from the process.
- FDOT Central Office should conduct Quality Assurance Review (QAR) in each district over the next years to ensure uniform implementation of the E&O Procedure.

## **BACKGROUND**

The FHWA Florida Division Office conducted a process review to assess the implementation of the Errors and Omissions policy. This process review involved an in-depth review of Federal-aid projects from three Districts, (D-2, D-5, and D-6) with supplemental agreements completed between July 30, 2000 and May 20, 2008 (see appendix “A” page 19). The criteria for these project reviews were those that had reported contract changes and were assigned to Responsible Parties: 1 (Design Consultant), or party 3 (Consultant Construction Engineering Inspector CCEI). Without conducting a process review in each district, it is unknown to Federal Highway Administration (FHWA) how effective the implementation of the 2004 E&O policy has been.

Because of this concern, the FHWA initiated a process review to evaluate and ascertain the effectiveness of FDOT's practice and procedures about E&O.

Some of the critical elements of this review process required the FHWA to examine the policies and procedures with respect to **premium costs** in conjunction with selected FDOT **personnel**. In addition, the review team was required to provide their findings, best practices and recommendations accordingly.

FDOT has identified "premium costs" as those which are essentially non-value added work to the project. These premium costs associated with E&O are considered federal aid non-participating. FHWA's policy regarding participation in consultant design errors and/or omissions is that the consultant should pay for the cost of the new design. In addition, the consultant may be held responsible for the extra costs associated with the change in construction.

**Errors and Omissions:** Acts of professional negligence committed by the Engineer of Record (EOR) in the performance of engineering design services or creative work, and acts of professional negligence committed by the CEI in performance of construction engineering and inspection services.

## **PURPOSE OF REVIEW**

Title 23 of the Code of Federal Regulation (CFR) Section 172.9 and 635.120, stated that a highway agency shall have written procedures that will determine the extent to which a consultant will be liable for costs resulting from errors and omissions in their designs. As a result, the Florida Department of Transportation (FDOT) adopted a policy on Errors and Omissions (E&O) on October 21, 2004. The FDOT must also comply with the Florida Administrative Code (F.A.C) and Construction Project Administration Manual (CPAM) which obligates the Department to pursue claims against consultants for substandard work products. Both requirements have resulted in the creation of the FDOT's E&O policy, 375-020-010-C. In light of the increasing use of consultants and recent efforts by FDOT to improve its consultant procurement practices, the FHWA saw the need to evaluate the impact and effectiveness of the FDOT's E&O cost recovery process.

## **SCOPE AND METHODOLOGY**

The focus of the Errors and Omissions Team's on-site review was on the implementation of the 2004 E&O procedure in each of the three FDOT's District Offices. The review team used the review guideline items that were developed based on criteria in the existing procedure. The team assessed the selected projects in each District Office related to FDOT Error and Omission and, analyzed occurrences as per Construction Project Administration Manual (CPAM) and

Procedure number 375-020-010-c. In addition, the team further examined the premium cost review and recovery determination at each district level.

**The on-site review team members were as follows:**

Phillip Bello, FHWA, FLDIV Office (Team Leader)

Marvin Williams, FHWA, FLDIV Office

BSB Murthy, FHWA, FLDIV Office

Shawn Murphy, FDOT, Central Office

The on-site reviews included a review of the FDOT CPAM procedure manual in conjunction with the Supplemental Agreement with premium cost determination; examination of supporting documentation; and interviews with the District Design Engineer staff, District Construction Engineer staff, Construction Project Administration staff, Construction Engineer Inspector staff, Error and Omission Liaison, Senior Management Officials, and others who are involved in the review process.

The following district construction and design personnel provided information and documentation to written and oral questions:

Bobbi Goss, District 2 Errors and Omissions Liaison

Hillary King, District 2, Production.

Jim Pitman, District 2, Design.

Michael Sandown, District 2, Construction.

George Borchik, District 5 Errors and Omissions Liaison.

Frank Odea, D. 5 -District Construction Engineer (DCE)

Beater Skys Palasz, District 5 Design

Kara Adams, District 5 Construction

Alida Schmih, District 5 Production

Teresita Alvarez, District 6 Errors and Omissions Liaison

Mark Croft, District 6 Construction Management

Ali R. Toghiani, District 6 consultant Management

## REPORT

The review team selected three of the seven FDOT Districts as a representative statewide sample. The three Districts reviewed were confirmed that each has carried out the intent of the Errors and/or Omissions (E&O) activities in accordance with the procedure. The Department currently has in place a procedure that has proven useful directive in identifying E&O encountered in the field, documenting the problem and responsibility, negotiating and approving a solution. Since the establishment of the Procedure, no process review has been performed to measure the success of implementing the policy. The E&O process review team is responsible to conduct the followings:

- Ensure compliance with Federal requirements;
- Identify opportunities for greater efficiencies and improvements to the program
- Ensure Errors and/or Omissions are effectively identified, documented and properly evaluated on both oversight and state-administered projects.
- Identify and document the FDOT's success at implementing the Errors and/or Omissions policy in accordance with the provisions of the directive.
- Identify how each District is handling premium cost related to SA
- Assemble best practices from districts as it relates to handling E&O and premium cost issues.
- To assure that projects are completed in reasonably close conformance with the authorized PS&E package.
- Identify the supporting documentation used to satisfy the assurance being made to confirm FDOT District implementation of E&O policy and application of premium costs.
- Assess the implementation of statewide web-base tracking system.

The FDOT's written process for handling Errors and/or Omissions that are found during construction is briefly outlined below:

1. Upon discovery of the design issue, the CCEI promptly advises the CPM who will notify the DPM verbally or by e-mail.
2. The DPM is obligated to promptly notify the EOR of the issue by verbal communication. This must be followed by e-mail or other written documentation (early notification).

3. The CCEI, CPM, DPM, and EOR are responsible to immediately work together to identify, and evaluate a resolution of the project design issues.
4. The DPM shall work with the EOR to clarify the project issues by reviewing the plans and specifications and determine solution on timely manner.
5. If the project issues appear to have been caused by EOR Errors and/or Omissions the DPM has the additional responsibility of providing the EOR with formal written notification of the nature and scope of the design issues.
6. The CCEI and the CPM a negotiate solution with the contractor along with DPM and EOR input.
7. The CCEI prepare SA coding, the CCEI and DPM assess E&O with Legal advice.
8. The CCEI and DPM agree on coding and premium costs.
9. Errors and/or Omissions notification letter is sent to EOR in regards to premium cost.
10. The EOR evaluates and respond to determination/claim.
11. If EOR accepted the responsibilities, and issues resolved then it has reached an acceptable level; otherwise, District Legal prepares a settlement agreement.
12. The Director of Transportation (DTD) shall determine if the claim for E&O against the EOR warrants further action.

See appendix “A” page 19 – flowchart for E&O Resolution Process.

The FDOT procedures for pursuing reimbursement are fair and allow the consultant to participate in the solution of the E&O without admitting liability. After the normal dispute resolution procedures have been followed and issues are not resolved at the project level, a District Consultant Evaluation Committee (CEC) shall be utilized. Both the DPM (for EOR) and CPM (for CCEI) shall prepare a written summary of the assessment of the responsibilities of E&O, for the CEC’s review. The CEC shall consist of five members: three voting members, a non-voting legal representative (special Counsel), and the non-voting DPM or CPM. The three voting members shall include the District Directors (Operations and Production) and the DDE (for EOR) or DCE (for CCEI). The DPM or CPM shall coordinate the CEC meeting, document all activities and communicate the final recommendation(s) to the appropriate parties. The CEC shall make a final determination of consultant responsibility for E&O. The consultant may accept CEC’s determination, request a review of the CEC’s determination by a Consultant Claims Review Committee (CCRC), or proceed with litigation.

### **Observations, Discussion, and Recommendations**

Based on our review of records and discussion with staff, we have developed the following observations and recommendations:



### **Observation No. 1:**

FDOT provides adequate early notification, telephone calls, e-mails and registered letters to the Engineer on Record (EOR) whenever and wherever E&O arise.

### **DISCUSSION:**

- Per our discussion and review of records, and regardless of thresholds, the District immediately notifies the EOR in writing upon discovery of E&O issues that results in premium costs (as per the E&O Procedure).
- In addition, these communications from the Department highlights its intentions regarding costs recovery and therefore request the consultant's viewpoint. This process is considered a "best practice" since it allows ample time for communications between all affected parties for review and feedback. This practice also satisfies the Department's burden of proof requirement to notify the EOR of an issue should legal action to recover damages become necessary.
- District 2 in particular was able to follow the normal procedure; from early notification to settlement, and premium cost recovery (copies of returned checks were available for review) this is a best practice (Appendix "A" page 19 & Appendix "B" page 70). The other two districts provided early notification by e-mails, but no record of registered letters on file as per directive. In most cases, when the consultant responded and disagreed to claims, the Department never arranged for a follow-up meeting with the consultants for clarification and settlement. District 5 in particular stopped pursuing premium costs in 2008 due to direction from the District legal team (see appendix "A" page 19).

### **RECOMMENDATION:**

There is a need for a better communication and coordination when pursuing premium cost. Out of the three districts that were visited, two Districts failed to follow-up with early coordination process as per E&O Procedure, E&O lead personnel failed to coordinate meetings/reviews with consultants to pursue premium cost, and the tracking of premium cost recoveries wasn't adequate. Follow up with consultants about the FDOT's decision was often behind (sometimes up to one year). Currently, the E&O liaison contact person has other responsibilities and premium cost tracking is a collateral duty. Therefore, the team recommends that the districts need to have a key contact person to communicate/coordinate to both the construction/design team and EOR/consultant on how to resolve all the current and past premium cost cases in a timely manner. The E&O liaison should be able to provide training to new employees propagating on how to eradicate errors and omissions during constructability review to reduce and eradicate E&O/premium cost from all public projects.

## **RESOLUTION:**

### **Observation No. 2:**

The coordination between the Construction Project Manager (CPM) office and Design Project Manager (DPM) office is adequate when handling E&O issues, but there is room for improvement.

## **DISCUSSION:**

Based on the review of records from the districts visited, there was evidence of demonstrated unity among staffs of design and construction teams. They seem to respond to errors and omissions issues in a timely fashion. The team also meets on a quarterly basis in order to discuss issues related to lessons learned from the previous design/construction mistakes that resulted in E&O. From these quarterly meetings, the constructability review process becomes a high priority to both teams. All the visiting districts felt they are strong on plan reviews at early stages (30%, 60%, and 90%) of the project development before sending the final PS&E package to the Central Office for letting. There seems to be a consensus among the district staffs that the constructability review process has helped to drastically reduce E&O in most of the districts' projects based on bid-ability and constructability/implementation.

One of the best practices adopted and implemented by District 6 relates to utility work. This practice requires that relocations or improvements be carried out prior to mobilization. This practice also helps to avoid any utility conflicts between the utility company and the prime contractor and thus eliminates the need for Supplementary Agreement (SA).

1. Both teams can reach agreements on E&O prior to the coding of a supplementary agreement;
2. The process can also help expedite processing of the supplementary agreement and thereby making a solid determination in regards to coding and premium costs.

## **RECOMMENDATION:**

In view of all the preceding observations and analysis, we hereby recommend the following:

1. Coding a Supplemental Agreement (SA) should be a joint responsibility between the CPM and the Design Project Manager (DPM) with input from the EOR.
2. Coding a SA independently, does not reflect the full extent of the scope of work and any constraints placed on the consultant by the Department.
3. Whenever the premium cost is revised based on the Design Project Manager's finding, the DPM shall inform the CPM immediately that the premium cost has been revised. By

doing so, the CPM will have the opportunity to amend the project file/record since the initial SA coding in the field (CEI & CPM) may have a different opinion at the SA committee (DPM).

4. Therefore, a joint and coordinated effort from both construction and design team is essential in regards to premium cost determination. Similarly, contract coding, and premium cost tabulation should be coordinated between the CPM and DPM teams.

## **RESOLUTION:**

### **Observation No. 3:**

The review team believes that the districts need an E&O central point of contact.

## **DISCUSSION:**

The Errors, Omissions, and Contractual Breaches by Professional Engineers, Topic No. 375-020-010c, section 1.1 and 2.3.1(Appendix “A” page 19), clearly define the leadership role of the DPM in regards to SA coding and premium cost determinations. The Design Project Manager is the key contact and lead coordinator of issues related to any issues immediately after the CEI initiation, from early notification to premium cost recovery. Some of the irregularities in question include the following:

1. In one District, if a consultant responds to the District’s letter and disagrees with the premium cost determination, that case seems to end there.
2. The District in question has not organized any meeting with the consultants since there was no direct district point of contact. That district has also stopped pursuing premium costs recovery since 2008 due to discussions with the District legal team. As a result, the district has not recovered any premium costs since the establishment of the procedure manual (see page 19).
3. On the other hand, District 2 has established an effective and functional central point of contact with demonstrated results. This process has allowed discovery and recovery of premium costs whenever justified. For example, a district may assign one staff member as the E&O liaison whose duties and responsibilities may include monitoring of all activities relating to SA and premium costs for each project; project correspondence, keeping meeting minutes, premium cost tabulation, organizing and maintaining copies of checks received from consultants (premium cost recoveries). Other duties may include maintaining receipts of registered letters to EOR and consultants. These were evident during our review and are entered into the tracking system. Should a dispute occurs on premium cost determination, the District 2 E&O coordinator invites all parties involved (the EOR, DPM, CPM, and the consultant) to discuss the matters and thus they were able

to resolve the issues based on facts/evidences on record. In return, the recovered monies are sent to the FDOT Central Office as per E&O procedure manual (Appendix “A” page 19). More than 80% of all premium costs issues that occurred in District 2 were resolved and consultants paid the premium cost liabilities to the District Office in form of a check (not in-kind services). The FDOT, D-2 E&O team discourage the utilization of the in-kind services from the design consultant firms.

4. In view of these facts, we suggest that the position of E&O liaison need to be filled and fully involved when any SA and premium costs are initiated. For example, other Districts allow the DPM to handle and track all SA and Premium Costs and then relay the information to the E&O liaison.

### **RECOMMENDATION:**

Administratively, the Errors and Omissions Liaison staff is the central point of contact that represents the District Project Management Office, and should be viewed as the coordinator of all the various offices involved in the E&O process. This best practice assures reliability and trust within disciplines. This practice results in:

1. Improved tracking and also enhances and provides prompt responses and updates the premium costs that will help to determine accurate and efficient aggregate threshold. This agreement regarding the status of recovery efforts has been undertaken by the district.
2. Additional dedicated staff is needed who should be assigned to implementing the E&O policies and procedures in order to improve coordination with the consultants. This will also assure reduction in time on premium costs issue resolution.
3. This single of point of contact will also lead to uniformities, provide improved project tracking, coding, improved communication (minutes, responses, meeting records, etc.).
4. Improved coordination will provide a better avenue of mentoring and training new staff on how to deal with E&O issues and processes.
5. Alternatively, the DPM might designate a qualified and dedicated staff member as the central contact person who could be handling all SA issues and premium costs for the overall benefits of the District.

### **RESOLUTION:**

**Observation No. 4:**

“In-kind service” appears to be a successful alternative to recovering actual premium cost dollars from design consultants for E&O, but it necessitates an internal guidance for the FDOT in order to be uniform and beneficial.

**DISCUSSION:**

The E&O procedure Section 4.3 (Appendix “A” page 19), allows “In-kind services” from a consultant, “in lieu of money” due to damages caused by E&O. “In-kind services” appear to be a good alternative approach in recovering actual premium cost dollars from design consultants for E&O. This approach appears to be working well within the existing contracts and for definable services for a short duration. An example of this could be a consultant who is providing project management services to the FDOT for about six or less months. Another example is associated with premium costs that are less than \$ 25,000.00 since this will be easier to recover through “in kind services”. This option is particularly easier in defraying premium cost from a small size consultant (DBE). District 6 uses this process more than the other districts visited (see D.6 report, Appendix “A” page 19).

The review team commends the District in their application and utilization of this best practice in the recovery of premium cost. This is particularly important if the amount is less than \$25,000.00.

Based on the number of projects we reviewed, approximately 90% of the premium costs were repossessed through this services “In -kind”. The challenge that goes along with this is the degree of commitment needed is overwhelming.

1. During the E&O review, the team did not see sufficient supporting documentation that justified the equivalent services that were used in lieu of premium cost.
2. Lack of evidence of the methodology implementation, internal guidance on how services “in-kind” are carried out, circumstances that warrant determination, agreement between the District and the Consultant were all absent.
3. Likewise, information in regards to the FDOT Finance Office involvement was neither presented nor available for review.

**RECOMMENDATION:**

Since Districts 6 embraces services “In-kind” more than the rest of the Districts reviewed, it is important to note that:

1. District 6 develops an internal guidance that elaborates on how to forgo premium costs for “In-kind” services.
2. The FDOT Finance Office needs to be involved in this process on how to balance expenditure. There is a need for better internal guidance.

## **RESOLUTION:**

### **Observation No. 5:**

E&O procedure, 375-020-010-c, has no specific monetary limit for pursuing premium cost due to E&O.

## **DISCUSSION:**

The process review could not establish a statewide consensus for appropriate threshold values. The unwritten thresholds are \$10,000 per single occurrence and \$25,000 cumulative per project; however, recovery efforts observed during process review lack consistencies. One district for instance recovered \$300.00 worth of premium cost. On the other hand, another district felt that it is not worth pursuing the design consultant(s) for small amounts when plan errors and omissions exist. The threshold in D-6 is \$25,000 or less. According to other district, the SA committee makes the decision to exempt projects that reaches the threshold of \$25000 or less. Overall, the \$25,000 threshold at the District level is an unwritten policy; no memorandum was produced during the interview or discussions. In most cases, the SA committee reviews the E&O coded and makes the final decision. All E&O's should still be recorded and tracked in order to evaluate a consultant firm's record over time and to be used for yearly consultant ratings. Consideration should still be given to pursuing a consultant firm for multiple E&O's based on the cumulative losses from a single consultant firm. FDOT should always maintain the right to pursue reimbursement from a consultant for any amount when justified, and the emphasis for field documentation should not be diminished because of a monetary threshold. In doing this, the consultant will pay a closer attention to their performance. Unnecessary spending, re-work, and additional contract time will be eradicated.

## **RECOMMENDATION:**

Re-evaluate current District thresholds for the appropriate level of premium costs that should be pursued for recovery. FDOT's process should include sufficient documentation necessary to support cost recovery, and procedures for determining a consultant's liability. To be consistent and for uniformity the FDOT should discourage the use of minimum threshold and recover all costs related to E&O. Emphasize through training, the importance of initiating the recovery process and remind the District staffs that FDOT retains the right to pursue recovery, regardless of the amount.

## **RESOLUTION:**

### **Observation No. 6:**

The in-house level of experienced staff required dealing effectively with errors and omissions may no longer be available due to reduction in staffing and new hires. FDOT staff's relationship with the Consultant engineers has generated unfavorable outcome to E&O policy implementation.

## **DISCUSSION:**

The district personnel informed the review team that there are situations in which making a determination as to whether the mistake is an apparent E&O could be unclear. During the review of documents, there have been instances where the District Construction Engineer (DCE) believes that E&O for discovery was truly a premium cost and was coded accurately; however, the Design Construction Engineer (DCE) coded it differently. District construction personnel (CEI & DCE) would like an understanding of what should be defined as an error or omission to better help in identify in the field.

## **RECOMMENDATION:**

Identify and train key personnel in each District to handle all errors and omissions issues for consistency. Provide statewide training to all Project Managers, Design Project Managers, and develop a clear definition on "what is an error and an omission?" and basic of E&O policies so that everyone can be on the same page of what constitutes the E&O process and procedures.

## **RESOLUTION:**

### **CLOSING REMARKS:**

The FDOT poses has a solid policy in place that only requires few revisions (such as, "Services In-kind"). It is important that the FDOT provide minimum required training and take a fresh look at how they are implementing the E&O policy on an annual basis. There is a need to provide a feedback to the field personnel when premium cost issues are resolved. As stated earlier, the FDOT does not appear to fully use their procedure for pursuing reimbursement from Design Consultants in the majority of the districts that were reviewed. It is important that FDOT uphold its policies and procedures and pursue reimbursement from consultants due to negligence.

All E&O occurrences should be recorded and tracked in order to evaluate a consultant firms' yearly performance ratings. Consideration should still be given to pursuing a consultant firm for multiple E&Os violations that result in premium cost. FDOT should always maintain the right to pursue reimbursement from consultant for any amount when justified, and the field documentation should not be diminished because of a monetary threshold.

Also, there is a need to form an Errors and Omissions Cost-Recovery Committee that will include FDOT management for each district. This committee will develop a plan for the creation of a new Consultant Performance Review Committee (CPRC). The primary responsibility of the CPRC will be to review projects indentified for cost recovery in order to ascertain compliance with policies/procedures, determine liability, and based on its findings, recommend the pursuit of cost recovery. Additionally, this review establishes a method by which consultant performance may be documented, measured, and tracked for purposes of future consultant selection processes.

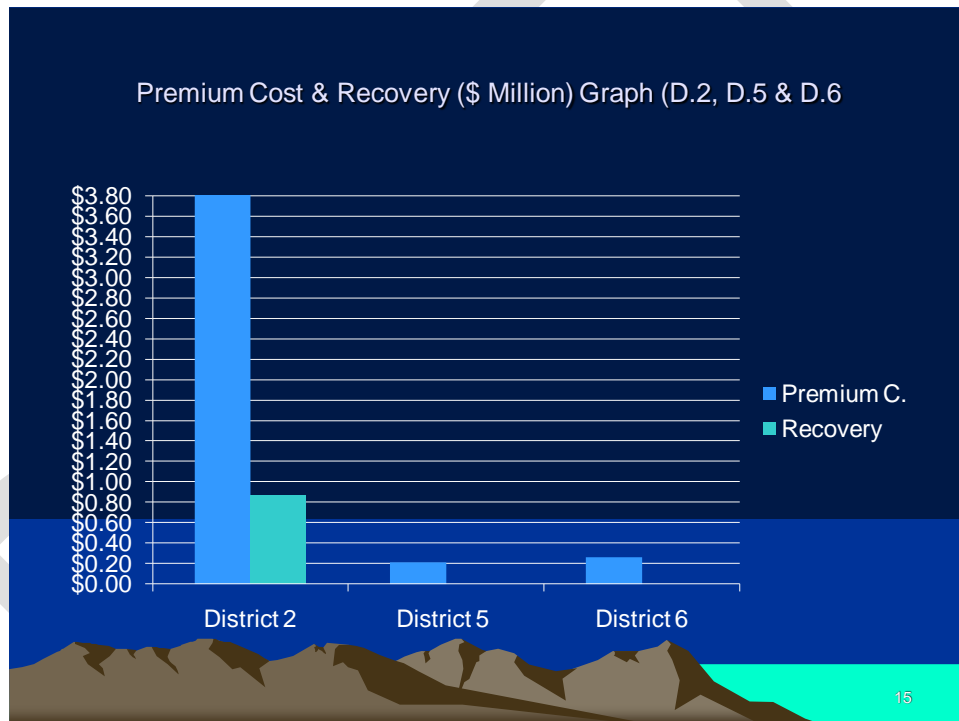
Currently, the communication link between District personnel and the Central Office Legal staff when pursuing recovery of damages for errors and omissions is missing. Therefore, the District Errors and Omissions Liaison should be designated as the point of contact to coordinate the status of recovery efforts pursued by the Central Office Legal with the appropriate District personnel.

Final, the Department should consider a process similar to a Dispute Resolution Board in the construction industry, which allows industry peers rather than the courts to evaluate consultant responsibility for dispute errors and omissions issues.



General Information						
District	Contract	Fin Proj ID	Project Cost	Total SA	Total Premium	Total Recovery
2	E2L00	21095225201	\$ 2,427,400.00	\$ 30,000.00	No determination	\$ -
2	T2097	20996915201	\$ 46,326,754.56	\$ 6,350,446.86	\$ 2,648,775.59	\$ In house design
2	T2117	21324515201	\$ 61,798,362.84	\$ 8,418,669.47	Not provided	\$ 14,594.00
2	T2119	20927815201	\$ 85,115,132.48	\$ 4,602,112.70	\$ 981,492.93	\$ 46,722.20
2	T2196	20965955201	\$ 62,071,103.40	\$ 1,248,995.76	\$ 292,789.90	\$ 26,052.61
5	T5043	24249315201	\$ 42,930,065.93	\$ 28,580.71	\$ 28,580.71	
5	T5071	24234115201	\$ 75,178,783.56	\$ 16,790.50	\$ 16,790.50	
5	T5072	24271615201	\$ 29,722,214.53	\$ 145,097.68	\$ 45,034.51	
5	T6074	N/A	No supplemental			
5	T5102	24248425201	\$ 125,807,386.48	\$ 102,842.27	\$ 34,530.43	
5	T5109	23842415201	\$ 27,378,136.96	\$ 191,954.07	\$ 77,824.28	
5	T5159	40846315201	\$ 59,674,244.26	\$ 3,416.49	\$ 3,416.46	
6	T6047	40883415201	\$ 55,118,379.26	\$ 104,815.65	Pending	
6	T6057	40763315201	\$ 6,048,317.00	\$ 150,000.00	\$ 15,981.65	
6	T6060	25054825201	\$ 13,868,964.00	\$ 16,500.00	-	
6	T6061	41275425201	\$ 5,823,364.66	\$ 309,812.56	\$ 208,977.34	
6	T6074	24964015201	\$ 70,599,557.02	\$ 911,517.45	\$ 10,817.58	
6	T6102	41247015201	\$ 4,621,607.00	\$ 71,481.34	-	
6	T6138	40558285201	\$ 2,996,148.00	\$ 29,087.25	\$ 20,580.00	

General Information				
District	Project Cost	Total SA	Total Premium	Total Recovery
District 2	\$ 257,738,753.28	\$ 20,650,224.79	\$ 3,923,058.42	\$ 87,368.81
District 5	\$ 360,690,831.72	\$ 488,681.72	\$ 206,176.89	-
District 6	\$ 159,076,336.94	\$ 1,593,214.25	\$ 256,356.57	-



## Appendix A

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Approved: Effective: October 21, 2004  
Office: Production Support  
Topic No.: 375-020-010-c

## **IDENTIFYING AND ASSIGNING RESPONSIBILITY FOR ERRORS, OMISSIONS, AND CONTRACTUAL BREACHES BY PROFESSIONAL ENGINEERS**

### **PURPOSE:**

To establish a procedure to identify, investigate, and document errors, omissions, and contractual breaches in consultant-prepared construction plans and contract documents, or in the performance of consultant construction engineering and inspection services; to determine and document the extent of consultant responsibility for the cost of plan revisions and certain added construction costs or claims resulting from errors, omissions, and contractual breaches; and to establish the requirement for a recommendation to pursue recovery of certain added project costs.

### **AUTHORITY:**

Section 287.055, Subsections 20.23(4) (b), 334.044 (9), (10) (a) and (b), and 337.015(3), Florida Statutes.

Rule 61G15-18.011(1), Definitions. Rule 61G15-19.001(4), Grounds for Disciplinary Proceedings. Rule 61G15-30.002 (1), Definitions Common to All Engineer's Responsibility Rules. Florida Administrative Code.

Federal Aid Policy Guide 23, Section 635.120, Code of Federal Regulations.

### **REFERENCES:**

Procedure No. 350-060-303, Accounts Receivable

Procedure No. 350-080-300, Recording, Transmitting and Depositing Receipts and Refunding Moneys

Procedure No. 700-000-000, Construction Project Administration Manual (CPAM)  
375-020-010-c

### **SCOPE:**

The Department's District Consultant Project Management Engineer (DCPME), District Design Engineer (DDE), Design Project Manager (DPM), Errors and Omissions Liaison; District Construction Engineer (DCE), Operations Engineer, Construction Project Manager (CPM), Construction Engineering and Inspection (CEI) Personnel; and the Office of Comptroller-General Accounting Office (OOC-GAO) are the principal users of this procedure.

### **DEFINITIONS:**

**Construction Engineering and Inspection (CEI):** Personnel, whether consultant or Department employee, providing construction engineering and inspection services.

**Construction Plans and Contract Documents:** Consultant-prepared plans and contract documents as contracted by the Department and defined in the professional services agreement.

**Construction Project Manager (CPM):** The Department employee whose duties include managing consultant CEI contracts.

**Consultant:** Either the EOR or CCEI.

**Consultant CEI (CCEI):** A consulting engineering firm pre-qualified and retained by the Department to perform construction engineering and inspection services on a project or a series of projects. For this procedure only, all references to CCEI include the appropriate coordination with the Construction Project Manager (CPM).

**Contractual Breach:** The failure of the EOR or CCEI to perform one or more aspects of its contractual obligations.

**Contractual Obligation:** The legal responsibility to satisfy the terms and conditions of the professional consultant contract.

**Department CEI:** The Department employees who perform construction engineering and inspection services.

**Design Project Manager (DPM):** The Department employee whose duties include managing design contracts.

**Engineer of Record (EOR):** As defined in Rule 61G15-30.002 (1), Florida Administrative Code: "A Florida professional engineer who is in responsible charge for the preparation, signing, dating, sealing and issuing of any engineering document(s) for any engineering service or creative work." For this procedure only, the EOR is a professional consulting engineer retained by the Department to provide said services. 375-020-010-c

**Engineer's Estimate:** A document signed and dated by the CEI. The Engineer's Estimate is CEI's estimate of the actual time and cost impacts to the contractor caused by a contract change without regard to fault, or the percentage of those cost and time impacts the contractor may be entitled to recover. For each contract change issue, the Engineer's Estimate will show the pay items involved, the quantities, the unit prices, the time impacts (if applicable), and the basis for the estimate.

**Entitlement Analysis:** A document, signed and dated by the CEI, containing statements as to each issue of a contract change; and stating the reasons why the contractor is, or is not, entitled to recover some or all of the time and cost impacts calculated for that contract change issue in the Engineer's Estimate. The Entitlement Analysis for each issue should also include a numeric percentage of those cost and time impacts for which the reasons previously stated justify the contractor's entitlement. Each contract change issue should include all the pay items associated with that issue.

**Errors and Omissions:** Acts of negligence committed by the EOR in the performance of engineering design service or creative work, and acts of negligence committed by CCEI in the performance of construction engineering inspection services.

**Errors and Omissions Liaison:** A District employee—appointed by the District Design Engineer—who is responsible for the status of the recovery effort for all District Errors and Omissions issues.

**Negligence:** As defined in Rule 61G15-19.001(4), Florida Administrative Code: "A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in Section 471.033(1) (g), F.S., is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles."

**Premium Costs:** The additional cost of a contract change that would not have been incurred if the work had been included in the original contract. More specifically,

premium costs are dollar amounts paid for non-value added work. Delays, inefficiencies, rework, or extra work as shown below, other than those caused by the contractor and/or his subcontractors or suppliers, will be considered as non-value added work. Non-value added work can occur in three distinct situations:

1. Work delays or inefficiencies. In this situation, the premium costs are the total delay/inefficiency damages paid to the contractor.
2. Rework. The premium costs are the dollar amount of the original items of work that have to be removed and the costs to remove these items.
3. Extra work. In this situation, the premium costs are computed as the net difference between the final agreed prices paid to the contractor and the Engineer's Estimate—what the cost would have been had the extra work been included in the original bid at letting.

Premium costs associated with EOR and CCEI Errors and Omissions shall be Federal aid Non-Participating 375-020-010-c

**Responsible Charge:** As defined in Rule 61G15-18.011(1), Florida Administrative Code: "Responsible Charge" shall mean that degree of control an engineer is required to maintain over engineering decisions made personally or by others over which the engineer exercises supervisory direction and control authority."

**Services In Kind:** Services provided by a consultant—in lieu of money—as restitution for damages caused by Errors and Omissions.

## **GENERAL:**

The Department employs professional consulting engineers to provide design engineering and construction engineering and inspection services. While consultants are accountable for the technical accuracy and quality of their work, mistakes do occur. Consultant-prepared construction plans and contract documents may contain errors or items may have been omitted; as a result, cost and time overruns may occur on a construction project. Cost and time overruns may also occur on a construction project because of a breach in consultant CEI contract administration.

**Section 337.015 (3), F.S.**, obligates the Department to pursue claims against consultants for substandard work products. When consultant errors, omissions, or contractual breaches rise to the level of negligence, the Department shall pursue recovery for certain added project costs. For the purpose of this procedure only, "errors, omissions, and contractual breaches" shall be referred to as "Errors and Omissions."

Federal-aid participation in all changes to the Department's construction contracts shall be determined as required by the **Federal Aid Policy Guide 23, Section 635.120, Code of Federal Regulations**.

## **1. DISCOVERY**

During the construction phase of a project, issues may arise that require clarification of the construction plans and contract documents. Such issues are generally resolved through a request for information, but they may also lead to design revisions and/or contract modification. As partners in the project, the CEI, DPM, and EOR must work together to resolve these issues as quickly as possible in order to minimize construction

interruptions.

To establish the appropriate lines of communication, the DPM and EOR (or their representatives) shall attend the project's pre-construction conference. The Department shall compensate the EOR for attendance at the pre-construction conference through post-design services. When necessary, the CEI shall coordinate with the DPM and EOR for their participation in project progress meetings. The Department shall compensate the EOR for attendance at project progress meetings through post-design services, unless the project progress meetings are the result of Errors and Omissions. Project issues may also arise as a result of CCEI contract administration. Discovery typically occurs during periodic reviews of the CCEI's work product, supplemental agreements, time extensions, staffing, equipment, and project records. The Department's CPM is responsible to identify Errors and Omissions that are the result of CCEI contract administration.

## **1.1 EOR ERRORS AND OMISSIONS**

The CEI shall promptly advise the EOR and DPM of any project issues for which the EOR may be liable (verbal communication must be followed promptly by e-mail or written documentation). Early notification offers the EOR an opportunity to mitigate; moreover, it may prevent future contractor claims against the Department. While the EOR and DPM are immediately responsible to assist the CEI with resolution of the project issues, the DPM has an additional responsibility if the project issues appear to have been caused by EOR Errors and Omissions. In these instances, the DPM shall notify the EOR in writing of project issues that may result in premium costs and contract time (**Appendix A – Early Notification Letter – Design**). Further, the DPM shall establish and maintain a project file to record all information related to EOR Errors and Omissions.

The DPM, with input from the EOR, may be able to clarify the project issues by reviewing the plans and specifications, the EOR's original scope of work, and any specific requirements the Department imposed on the EOR. The EOR typically provides revised drawings, calculations, and specification changes to resolve project issues. Post-design services compensate the EOR for such involvement during construction. However, the costs for site visits and additional engineering services are not billable as post-design services when caused by EOR Errors and Omissions during design. The EOR shall track such costs separately for potential compensation.

As partners in the project, the CEI, DPM, and EOR shall determine the appropriate course of action to resolve project issues. The CEI will negotiate any additional cost and time required to implement the solution with the construction contractor.

With the approval of the DDE/DPM and DCE/CPM, the consultant may work directly with the construction contractor to resolve project issues, provided the Department incurs no premium economic or time costs as a result. The CEI shall document such resolution through a supplemental agreement with the construction contractor.

## **1.2 CCEI ERRORS AND OMISSIONS**

The CPM shall prepare a written assessment of the project issues, determine the appropriate corrective action, and establish a reasonable time frame to implement the solution. The CPM shall promptly notify the CCEI in writing of project issues that may result in premium costs and contract time (**Appendix B – Early Notification Letter –**

**CCEI**). Further, the CPM shall establish and maintain a project file to record all information related to CCEI Errors and Omissions. If the Department determines that the CCEI is not responsible for Errors and Omissions, the DCE's delegate shall promptly notify the CCEI of the results, and all reasonable costs incurred by the CCEI during this process shall be billable. The CCEI shall track such costs separately for potential compensation.

## **2. CONTRACT MODIFICATION**

Resolving project issues typically requires a change to the original construction contract through a supplemental agreement. ***Procedure No. 700-000-000, Construction Project Administration Manual (CPAM), Section 7.3***, defines the Department's method to initiate, document, and execute supplemental agreements. Successful recovery of damages caused by Errors and Omissions is highly dependent on the initial assessment of the project issues addressed in the supplemental agreement.

### **2.1 ASSESSMENT OF CONSULTANT RESPONSIBILITY AND COST IMPACT**

#### **2.1.1 EOR Errors and Omissions**

To ensure an accurate assessment of consultant responsibility, the CEI shall prepare the supplemental agreement with input from the DPM and EOR. When Errors and Omissions issues are not clear, the DPM shall seek the advice of Central Office Legal Counsel (Chief Civil Litigation Counsel or Special Counsels). Counsel shall provide assistance with the determination of consultant negligence and the likelihood for recovery of damages.

Project issues may initially appear to be the result of Errors and Omissions; however, upon further review, the Department may have constrained the consultant's scope of work. Accordingly, the DPM shall review the consultant's scope of work, the professional engineering standards in effect when the contract was executed, projectspecific

information provided to the consultant, and any other Department instructions, to determine the consultant's responsibility for the project issues. If the DPM is not a professional engineer, the review shall be performed by the professional engineer in responsible charge of the DPM.

The CEI shall calculate the premium cost impact for Errors and Omissions and assess consultant responsibility with input from the DPM and EOR. Premium costs are dollar amounts paid by the Department for non-value added work. Premium costs are typically the result of delays, inefficiencies, rework, or extra work.

The reasonable administrative costs the Department incurs to process a supplemental agreement, and to resolve changes in contract documents, together with additional construction engineering and inspection costs may be considered when determining premium costs.

#### **2.1.2 CCEI Errors and Omissions**

When Errors and Omissions issues are not clear, the DCE's delegate, with concurrence of the DCE, shall seek the advice of Central Office Legal Counsel (Chief Civil Litigation Counsel or Special Counsels). Counsel shall provide assistance with the determination of consultant negligence and the likelihood for recovery of damages.

The DCE's delegate should review the CCEI's scope of work, the approved staffing plan, the professional engineering standards including manuals and any other directives



in effect when the contract was executed, project-specific information provided to the CCEI, and any other Department instructions, to determine the CCEI's degree of responsibility for the project issues. If the DCE's delegate is not a professional engineer, the review shall be performed by the professional engineer in responsible charge of the DCE's delegate. The project issues may initially appear to be the result of Errors and Omissions; however, upon further review, the Department may have constrained the consultant's scope of work.

The DCE's delegate shall also determine the premium cost impact for Errors and Omissions and the level of consultant responsibility for such costs. Premium costs are dollar amounts paid by the Department for non-value added work. Premium costs are typically the result of delays, inefficiencies, rework, or extra work.

The reasonable administrative costs the Department incurs to process a supplemental agreement, and to resolve changes in contract documents, together with additional construction engineering and inspection costs may be considered when determining premium costs.

## **2.2 CODING**

**CPAM – Attachment for Section 7.3** defines the method for coding contract change.

The coding identifies the party who is responsible for causing the need for contract change, such as Production Consultant or Consultant CEI. It also indicates the Department's intention to recover premium costs. To ensure accuracy, the CEI shall prepare the supplemental agreement coding with input from the DPM and EOR.

If disputes in coding and premium cost calculations persist at the project level, the DCE and DDE shall establish an internal resolution process. Supplemental agreements that are the result of Errors and Omissions will also require a review of the Entitlement Analysis. Without interruption to the administration of the construction project, Construction and Design personnel shall agree on the contract modification coding and premium cost calculations.

For CCEI issues, the CPM shall prepare the supplemental agreement coding with input and concurrence from all appropriate parties. The Department shall promptly advise the EOR (or CCEI) of any changes in the assessment of responsibility during the resolution process.

## **2.3 EOR AND CCEI NOTIFICATION**

### **2.3.1 EOR Errors and Omissions**

The DPM shall notify the EOR in writing of the Department's intent to correct project issues by supplemental agreement with the construction contractor (**Appendix C – Errors and Omissions Notification Letter – Design**). The notification letter shall clearly state the Department's initial assessment of the project issues (premium costs, contract time and/or money, EOR responsibility) and request a written response from the consultant. The DPM shall also notify the EOR—as follow-up to **Early Notification (Appendix A)**—if there appears to be no consultant responsibility for the project issues. The DPM shall include copies of all such correspondence in the project Errors and Omissions file.

The CEI, CPM, and DPM shall evaluate the consultant's response to the EOR Notification Letter to complete the assessment for consultant responsibility. Determining consultant responsibility may require several discussions among the CEI, DPM, and EOR. If the Department determines that the consultant is not responsible for Errors and

Omissions, the DPM shall promptly notify the EOR of the results, and all reasonable costs incurred by the EOR during this process shall be billable as post-design services.

### **2.3.2 CCEI Errors and Omissions**

The CPM shall notify the CCEI in writing of the Department's intent to correct project issues by supplemental agreement with the construction contractor (**Appendix D – Errors and Omissions Notification Letter – CCEI**). The notification letter shall clearly state the Department's current assessment of the project issues (premium costs, contract time and/or money, CCEI responsibility) and request a written response from the consultant. The CPM shall also notify the CCEI—as follow-up to **Early Notification (Appendix B)**—if there appears to be no consultant responsibility for the project issues. The CPM shall include copies of all such correspondence in the project Errors and Omissions file.

The DCE's delegate shall evaluate the CCEI's response to the CCEI Notification Letter to complete the assessment for CCEI responsibility. Determining Consultant responsibility may require several discussions among the CCEI, CPM, and the DCE's delegate. If the Department determines that the CCEI is not responsible for Errors and Omissions, the DCE's delegate shall promptly notify the CCEI of the results, and all reasonable costs incurred by the CCEI during this process shall be billable.

## **3. RECOVERY**

*Note: This section applies to the EOR and CCEI.*

In general, the Department should pursue the recovery of any premium costs that are the result of consultant Errors and Omissions. However, the extent of the Department's recovery effort should be guided by the anticipated recovery amount and the likelihood of a successful recovery effort. Administrative costs, the expense of litigation, and the consultant's performance history may all affect the Department's decision to pursue recovery. If at any point in the process, the Department decides not to pursue recovery, the appropriate project manager shall document the decision in the project file and notify the EOR or CCEI.

The consultant may, as a result of early notification, accept responsibility for Errors and Omissions, and offer to settle with the Department. In these instances, the District Legal Counsel, in consultation with the DDE (for EOR issues) or DCE (for CCEI issues), shall prepare and execute the settlement agreement. All such settlement agreements require the review and approval of Central Office Legal Counsel.

With the approval of the DDE/DPM and DCE/CPM, the consultant may work directly with the construction contractor to resolve the issue provided the Department incurs no premium economic or time costs from the issue. Such resolution shall be documented through a supplemental agreement with the construction contractor.

The consultant may also have valid reasons to dispute the Department's assessment of Errors and Omissions issues. When such disputes cannot be resolved at the project level, the District Consultant Evaluation Committee (CEC) shall make the final determination regarding further recovery efforts.

### **3.1. CONSULTANT EVALUATION COMMITTEE (CEC)**

*Note: This section applies to the EOR and CCEI.*

The DPM (for EOR issues) or CPM (for CCEI issues) shall prepare a written summary of the assessment of responsibility for Errors and Omissions, for the CEC's review. The summary shall include a description of the Errors and Omissions, the basis for

determining consultant responsibility, a summary of the increased costs to correct the Errors and Omissions, and the consultant's written response to the Department's assessment.

The CEC shall consist of five members: three voting members, a non-voting legal representative (Special Counsel), and the non-voting DPM or CPM. The three voting members shall include the District Directors (Operations and Production) and the DDE (for EOR issues) or DCE (for CCEI issues). The DPM or CPM shall schedule the CEC meeting(s), document all transactions, and communicate the final recommendation(s) to the appropriate parties.

The CEC shall review the DPM's or CPM's written and oral summary and the related construction supplemental agreement. Additionally, the CEC shall interview the EOR or CCEI, as applicable, to obtain all points of view. The CEC shall make the final determination of consultant responsibility for Errors and Omissions and the corresponding premium costs.

The DPM (for EOR issues) or CPM (for CCEI issues) shall prepare a letter for the signature of the appropriate District Director, to notify the EOR or CCEI of the Department's decision to pursue recovery (**Appendix E – First Demand Letter – Design, Appendix F – First Demand Letter – CCEI**). The letter shall summarize the project issues and advise the EOR or CCEI of the Department's intent to pursue recovery. The consultant may accept the CEC's determination, request a review of the CEC's determination by a Consultant Claims Review Committee (CCRC), or proceed with litigation.

### **3.2. CONSULTANT CLAIMS REVIEW COMMITTEE (CCRC)**

*Note: This section applies to the EOR and CCEI.*

A Consultant Claims Review Committee shall convene at the request of the consultant to review a CEC determination of consultant liability. The CCRC shall review all documentation and testimony presented by the consultant and the Department in order to make a final recommendation. Presentations to the CCRC shall be informal, and the CCRC's ruling on entitlement shall be non-binding. Additionally, either party may request a ruling on the amount if entitlement exists.

The CCRC shall consist of three members. The Florida Institute of Consulting Engineers (FICE) shall select one member from the consultant community, with the Department's approval. The Department's State Highway Engineer shall select a member—a Department professional engineer employed in the area on which the Errors and Omissions issue is based—with approval from FICE. Together, the Department and FICE shall mutually agree on a third member—selected from the Department's Dispute Resolution Board (DRB)—who adequately represents the discipline in question. The DRB member shall not be associated with any current or previous DRB, convened on the same project. The DRB member shall serve as the chairperson for all CCRC activities and communicate the CCRC's transactions and final determination to all appropriate parties. Participation of the FICE member shall be at the expense of the consultant who requested the CCRC review. Participation of the Department's member and the DRB member shall be at the Department's expense.

### **3.3. LITIGATION**

*Note: This section applies to the EOR and CCEI.*

Legal action may be required to effect recovery if the consultant does not accept the

opinion of the CEC/CCRC, or declines to request a review of the project issues by the CCRC. The appropriate Department project manager shall seek assistance from the Office of General Counsel to pursue recovery of documented premium costs, not otherwise resolved.

When Errors and Omissions issues are elevated to the point of legal action, the Department's Office of General Counsel shall determine recoverability based on the applicable statute of limitations.

### **3.3.1. Documentation of the CEC/CCRC**

The DPM (for EOR issues) or CPM (for CCEI issues) shall prepare a folder containing all documentation and recommendations developed during the CEC/CCRC investigative process and forward this information to the Office of General Counsel for review. The folder label shall include the Consulting Firm Name, the Financial Project Identification Number, the Construction Contract Number, and the title "Errors and Omissions Recovery." The material within the folder shall be arranged in chronological order.

### **3.3.2. Review of the CEC/CCRC Documentation**

The Office of General Counsel shall review the findings of the CEC/CCRC and recommend the appropriate course of action to the District Secretary. Documentation must be sufficient to pursue civil action in the court system, should future negotiations with the consultant fail to settle on just compensation to the Department for the consultant's Errors and Omissions.

If the documentation is insufficient, the Office of General Counsel shall contact the appropriate Department project manager to request additional information. The project manager shall cooperate with the Office of General Counsel to promptly identify, obtain, or generate all documentation to the satisfaction of the Office of General Counsel.

If recovery is unlikely, the Office of General Counsel shall advise and seek concurrence from the District Secretary for a recommendation not to pursue the issue. Upon approval, the appropriate project manager shall notify the consultant in writing of the Department's decision.

Similarly, the Office of General Counsel shall advise and seek concurrence from the District Secretary for a recommendation to pursue recovery. Upon approval, the Office of General Counsel shall proceed to settle the matter through negotiations or initiate the appropriate legal action.

Prior to the Office of General Counsel filing legal action with the courts system, the appropriate District Director shall send a second demand letter to the consultant, respectfully demanding reimbursement for all premium costs incurred by the Department as a result of Errors and Omissions (**Appendix G – Second Demand Letter – Design, Appendix H – Second Demand Letter – CCEI**).

### **3.3.3. Recovered Amounts**

The Office of General Counsel shall advise the DPM (CPM for CCEI issues) of the amounts recovered through litigation. The DPM (CPM for CCEI issues) shall provide this information to the Office of Comptroller-General Accounting Office (OOC-GAO), Accounts Receivable Section and Cashier's Office using the format described in Section 4.1 of this procedure.

## **4. REPORTING, COLLECTION, AND CASH RECEIVED**

*Note: This section applies to the EOR and CCEI.*

*Note: The project manager shall include the District Errors and Omissions Liaison in all*

*correspondence with the OOC-GAO.*

The Department shall collect moneys from consultants in accordance with the following procedures:

***Procedure No. 350-060-303, Accounts Receivable***

***Procedure No. 350-080-300, Recording, Transmitting and Depositing Receipts and Refunding Moneys***

***Federal Aid Policy Guide 23 C.F.R.***

#### **4.1. Reporting and Collection**

The DPM (CPM for CCEI issues) shall provide documentation to the OOC-GAO, Accounts Receivable Section for all funds to be recovered. The OOC-GAO, Accounts Receivable Section shall maintain a system to document and track recovery of all funds received from consultants for Errors and Omissions. Reimbursement may be received in a lump sum or through a series of payments, when approved by the Comptroller (or delegate). For lump-sum payments, initial recovery efforts shall be handled at the District level. If payment is not timely, the DPM (CPM for CCEI issues) shall notify the OOC-GAO, Accounts Receivable Section who shall then continue the collection effort. If further collection efforts are not successful, the account may be turned over to the State's contracted collection agency. The OOC-GAO, Accounts Receivable Section shall coordinate and collect any approved series of payments for reimbursement. Please refer to ***Procedure No. 350-060-303, Accounts Receivable*** for detailed information.

#### **4.2. Cash Received**

The DPM (CPM for CCEI issues) shall submit all funds recovered by application of this procedure to the OOC-GAO, Cashier's Office in accordance with ***Procedure No. 350-080-300, Recording, Transmitting and Depositing Receipts and Refunding Moneys***. Correspondence shall include the following information:

Financial Project No.

Federal Aid Project No.

Project Description

Name of Consultant Firm

Department Project Manager (DPM/CPM)

Amount of Recovery

Date of Recovery

Sales and Services Invoice No.

Object Code

In July of each year, the OOC-GAO, Cashier's Office shall report the amount collected for Errors and Omissions in the previous fiscal year, by District by fund, to the Program and Resource Allocation Office. In mid-September, the Program and Resource Allocation Office shall allocate in Schedule A the collected amount back to each respective District and statewide program, as appropriate.

#### **4.3. Services In Kind**

The Department may accept services in kind from a consultant, in lieu of money, as restitution for damages caused by Errors and Omissions. Such services shall be equivalent to the value of the damages incurred by the Department and stipulated in a settlement agreement prepared by the appropriate Department legal office.

The DDE (DCE for CCEI issues) shall determine the scope of equivalent services that

will satisfy the consultant's obligation to reimburse the Department. Additionally, the DDE (DCE for CCEI issues) shall determine the appropriate consultant personnel (number, level, compensation rate) to accomplish the scope of equivalent services. Services in kind may not be used to circumvent the **Consultants' Competitive Negotiation Act (CCNA) (Section 287.055, FS)** or provide an advantage to the consultant in **CCNA** selection for services on future projects.

The DPM (CPM for CCEI issues) shall monitor and document the receipt of services in kind and provide quarterly updates to the OOC-GAO, Accounts Receivable Section. When the consultant's obligation to provide services has been satisfied, the DPM (CPM for CCEI issues) shall notify the EOR and the OOC-GAO.

## **5. TRACKING**

The Project Management, Research & Development Office and the Office of Information Systems shall establish and maintain a Web-based tracking system to monitor the Errors and Omissions resolution process.

To ensure communication among disciplines and provide prompt response to management, each DDE shall establish a central point of contact – the Errors and Omissions Liaison – to be responsible for the status of the recovery effort for all District Errors and Omissions issues. Additionally, the Errors and Omissions Liaison shall prepare a statistical summary of all recorded Errors and Omissions that have occurred in the District. The Liaison shall coordinate this summary with the DDEs, DCEs, State Roadway Design Office, State Construction Office, OOC-GAO Accounts Receivable Section, and the consultant community for quality assurance purposes.

## **6. TRAINING**

The Project Management, Research and Development Office—with assistance from the State Construction Office and the Office of General Counsel—shall prepare and deliver training in the use of this procedure. The Department shall include the consultant community in the target audience.

## **7. FORMS**

### ***Appendix A – Early Notification Letter – Design (insert date)***

***Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.***

Design Consultants, Inc.

1234 Long Street

Rural City, FL 33333

Re: ***Project Description...***

Financial Project ID 123456-1-52-01

Work Program No. 1234567

Contract No. 12345 (FY)

Dear Design Consultants:

Project Issues have been identified in the referenced contract that require immediate attention. The Department respectfully requests your assistance to fully evaluate the following issue(s) and determine the appropriate course of action to continue contract administration:

***(brief description of project issues)***

Issues of this nature may impact project costs and contract time; please give them your

immediate and full consideration. Compensation for on-site participation—and any additional engineering services—may be billed as post-design services, unless the project issues are caused by Errors and Omissions. Please track all additional services separately for potential compensation. Thank you very much for your prompt assistance and response by *(insert date)*.

Sincerely,

FDOT Design Project Manager

**Appendix B – Early Notification Letter – CCEI**  
*(insert date)*

**Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.**

CCEI Consultants, Inc.

1234 Long Street

Rural City, FL 33333

Re: **Project Description...**

Financial Project ID 123456-1-52-01

Work Program No. 1234567

Contract No. 12345 (FY)

Dear CCEI Consultants:

Project Issues have been identified in the referenced contract that require immediate attention. The Department respectfully requests your assistance to fully evaluate the following issue(s) and determine the appropriate course of action to continue contract administration:

***(brief description of project issues)***

Issues of this nature may impact project costs and contract time; please give them your immediate and full consideration. All reasonable costs you may incur during this process shall be billable, unless the project issues are the result of Errors and Omissions. Please track these costs separately for potential compensation. Thank you very much for your prompt assistance and response by *(insert date)*.

Sincerely,

FDOT Construction Project Manager

**Appendix C – Errors and Omissions Notification Letter – Design**  
*(insert date)*

**Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.**

Design Consultants, Inc.

1234 Long Street

Rural City, FL 33333

Re: **Project Description...**

Financial Project ID 123456-1-52-01

Work Program No. 1234567

Contract No. 12345 (FY)

Supplemental Agreement No. 1

Dear Design Consultants:

***(If the EOR did not respond to the Early Notification Letter, so note here.)***

In preparing the referenced Supplemental Agreement, the Department determined that

premium costs, as a result of Errors and Omissions in the construction plans and contract documents, exist in the amount of \$\_\_\_\_\_. These premium costs do not add value to the project and should have been avoided. Further, the Department **(may or intends to)** pursue recovery of these costs.

Please respond to this letter within ten (10) business days and state your position on the Department's assessment of costs and responsibility for the following Errors and Omissions:

**(description of errors and omissions...attachments as necessary)**

Sincerely,

FDOT Design Project Manager

**Appendix D – Errors and Omissions Notification Letter – CCEI**

**(insert date)**

**Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.**

CCEI Consultants, Inc.

1234 Long Street

Rural City, FL 33333

Re: **Project Description...**

Financial Project ID 123456-1-52-01

Work Program No. 1234567

Contract No. 12345 (FY)

Supplemental Agreement No. 1

Dear CCEI Consultants:

**(If the CCEI did not respond to the Early Notification Letter, so note here.)**

In preparing the referenced Supplemental Agreement, the Department determined that premium costs, as a result of Errors and Omissions in the administration of the project, exist in the amount of \$\_\_\_\_\_. These premium costs do not add value to the project and should have been avoided. Further, the Department **(may or intends to)** pursue recovery of these costs.

Please respond to this letter within ten (10) business days and state your position on the Department's assessment of costs and responsibility for the following Errors and Omissions:

**(description of errors and omissions...attachments as necessary)**

Sincerely,

DOT Construction Project Manager

**Appendix E – First Demand Letter – Design**

**(insert date)**

**Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.**

Design Consultants, Inc.

1234 Long Street

Rural City, FL 33333

Re: **Project Description...**

Financial Project ID 123456-1-52-01

Work Program No. 1234567

Contract No. 12345 (FY)



Supplemental Agreement No. 1

Dear Design Consultants:

Previously, Department project personnel advised you of damages incurred on the referenced contract in the amount of \$\_\_\_\_\_. These additional project costs are the result of Errors and Omissions and should have been avoided. The Department's Consultant Evaluation Committee recently convened and agreed with the assessment of costs and the recommendation to pursue recovery.

You may accept this determination or request an independent review by a Consultant Claims Review Committee. This committee will review the circumstances and offer their

assessment of consultant responsibility and costs. If you elect not to choose either of these two options, the Department will be required to initiate legal action to recover damages. Please respond to this letter within ten (10) business days.

Sincerely,

District Director

375-020-010-c

Page 20 of 22

**Appendix F – First Demand Letter – CCEI  
(insert date)**

**Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.**

CCEI Consultants, Inc.

1234 Long Street

Rural City, FL 33333

Re: **Project Description...**

Financial Project ID 123456-1-52-01

Work Program No. 1234567

Contract No. 12345 (FY)

Supplemental Agreement No. 1

Dear CCEI Consultants:

Previously, Department project personnel advised you of damages incurred on the referenced contract in the amount of \$\_\_\_\_\_. These additional project costs are the result of Errors and Omissions and should have been avoided. The Department's Consultant Evaluation Committee recently convened and agreed with the assessment of costs and the recommendation to pursue recovery.

You may accept this determination or request an independent review by a Consultant Claims Review Committee. This committee will review the circumstances and offer their assessment of consultant responsibility and costs. If you elect not to choose either of these two options, the Department will be required to initiate legal action to recover damages. Please respond to this letter within ten (10) business days.

Sincerely,

District Director

**Appendix G – Second Demand Letter – Design  
(insert date)**

**Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.**

Design Consultants, Inc.

1234 Long Street

Rural City, FL 33333

Re: **Project Description...**

Financial Project ID 123456-1-52-01

Work Program No. 1234567

Contract No. 12345 (FY)

Supplemental Agreement No. 1

Dear Design Consultants:

Previously, Department project personnel advised you of damages incurred on the referenced contract in the amount of \$\_\_\_\_\_. These additional project costs are the result of Errors and Omissions and should have been avoided. The Department's Consultant Evaluation Committee agreed with the assessment of costs and the recommendation to pursue recovery. **(If a CCRC is convened....** Additionally, an independent Consultant Claims Review Committee concurs with liability and costs.) The Office of General Counsel will initiate legal action if this issue is not resolved by **(insert date)**.

Sincerely,

District Director

**Appendix H – Second Demand Letter – CCEI**

**(insert date)**

**Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.**

CCEI Consultants, Inc.

1234 Long Street

Rural City, FL 33333

Re: **Project Description...**

Financial Project ID 123456-1-52-01

Work Program No. 1234567

Contract No. 12345 (FY)

Supplemental Agreement No. 1

Dear CCEI Consultants:

Previously, Department project personnel advised you of damages incurred but the Department on the referenced contract in the amount of \$\_\_\_\_\_. These additional project costs are the result of Errors and Omissions and should have been avoided. The Department's Consultant Evaluation Committee agreed with the assessment of costs and the recommendation to pursue recovery. **(If a CCRC is convened....** Additionally, an independent Consultant Claims Review Committee concurs with liability and costs.)

U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**Florida Division**

**545 John Knox Road, Suite 200  
Tallahassee, Florida 32303**

**(850) 942-9650**

January 27, 2010

In Reply Refer To: HPO-FL  
Re: E&O Process Review

Ms. Noranne Downs  
FDOT District Five Secretary  
719 South Woodland Boulevard  
Deland, Florida 32720

Dear Ms. Downs:

The Federal Highway Administration (FHWA) will conduct a joint Process Review with the Florida Department of Transportation (FDOT) on Errors and Omissions (E&O). The objective of this review is to evaluate the effectiveness of FDOT's current E&O practices and procedures, and confirm that the Department's process of identifying, documenting and tracking E&O matters that result in premium costs being recovered as per 23 CFR 172.9(a)(6).

The process review will include reviews of active and completed Federal-aid projects, as well as interviews with FDOT personnel that are involved with the projects from conception to final acceptance. FHWA has solicited team members for this review from various offices within FDOT.

This is a high priority process review as FHWA is performing a nation-wide review of E&O on Federal-aid projects. The process review team will begin visiting the selected Districts in February 2010, and plans to complete all interviews and documentation reviews by July 2010. FHWA will then generate a report that captures the team's findings, discussions, best practices, recommendations, and resolutions. The team will be presenting the final draft of the report to both FHWA and FDOT Senior Management in August 2010. FDOT's participation will be of great benefit to this review.

Your cooperation would be greatly appreciated. If you have any questions, please contact Mr. Phillip Bello who will be the FHWA lead for this process review at (850) 942-9650 Ext.3026.

Sincerely,

s/s Phillip Bello  
For: Martin Knopp, P.E.  
Division Administrator

PB;awa CT: PB S:\Program Ops\D5\Process Review\E&O Process Review2 File:

## **The District's E&O PROCESS REVIEW SCHEDULES**

1. District Two, 1109 South Marion Avenue Lake City Fl. 32025  
February 25<sup>th</sup> – 26<sup>th</sup>, 2010
2. District Five, 719 S. Woodland Blvd. Deland Fl. 32720  
March 23<sup>rd</sup> to 24<sup>th</sup> 2010
3. District Six, 1000 NW 111<sup>th</sup> Avenue Miami, FL.33172  
May 17<sup>th</sup> to 21<sup>st</sup> 2010

### **PROCESS REVIEW AGENDA**

#### **E&O Process Review - D.2 Office**

Agenda for E&O Review

February 25<sup>th</sup> & 26<sup>th</sup> 2010

1. Introduction – 8:30 a.m.
2. Errors and Omissions Questions (9:00 a.m. to noon)
3. Selected Projects Review (1:00 p.m. – 5:00 p.m.)

#### **February 26<sup>th</sup>**

4. Selected Projects Review continue (8: 30 a.m. – noon).
5. Projects Review cont. & close out (1:00 p.m. – 3: 00 p.m.)
6. Close –out meeting

#### **E&O Process Review - D.5 Office**

Review Agenda

March 23<sup>rd</sup> to 25<sup>th</sup> 2010

1. Introduction – 8:30 a.m.
2. Errors and Omissions Questions (9:00 a.m. to noon)
3. Selected Projects Review (1:00 p.m. – 5:00 p.m.)

#### **March 24<sup>th</sup>**

4. Selected Projects Review continues (8: 30 a.m. – 12 am).
5. Projects Review cont. & close out (1:00 p.m. – 4:30 p.m.)

#### **March 25<sup>th</sup>**

6. Project Review & close out (8:30 p.m. – 11:00 p.m.)

## **Error& Omission Process Review – D.6**

### **Review Agenda**

1. May 18<sup>th</sup> 2010 – First Day:
  - 8:30 a.m. to 9:00 a.m. – Introduction
  - 9:00 a.m. to 12:00 noon – Questions and answer section (include DCE, DDE, E&O Liaison)
  - 12:00 noon to 1:00 p.m. – Lunch
  - 1:00 p.m. to 3:00 p.m. – Interview DPM and Project Administration (PA)/or PE
  - 3:00 p.m. – 4:30 p.m. – project review
2. May 19<sup>th</sup> 2010 – Second Day:
  - 8:00 a.m. to 12:00 noon – Project review continue
  - 12:00 noon to 1:00 p.m. – Lunch
  - 1:00 p.m. to 4:30 p.m. – Project review continue
  -
3. May 20<sup>th</sup> 2010- Third Day:
  - 8:00 a.m. to 11:00 a.m. Project Review continue
  - 11:00 a.m. to 12:00 noon – Close out.



## **Errors & Omissions Questioners**

December 1, 2009

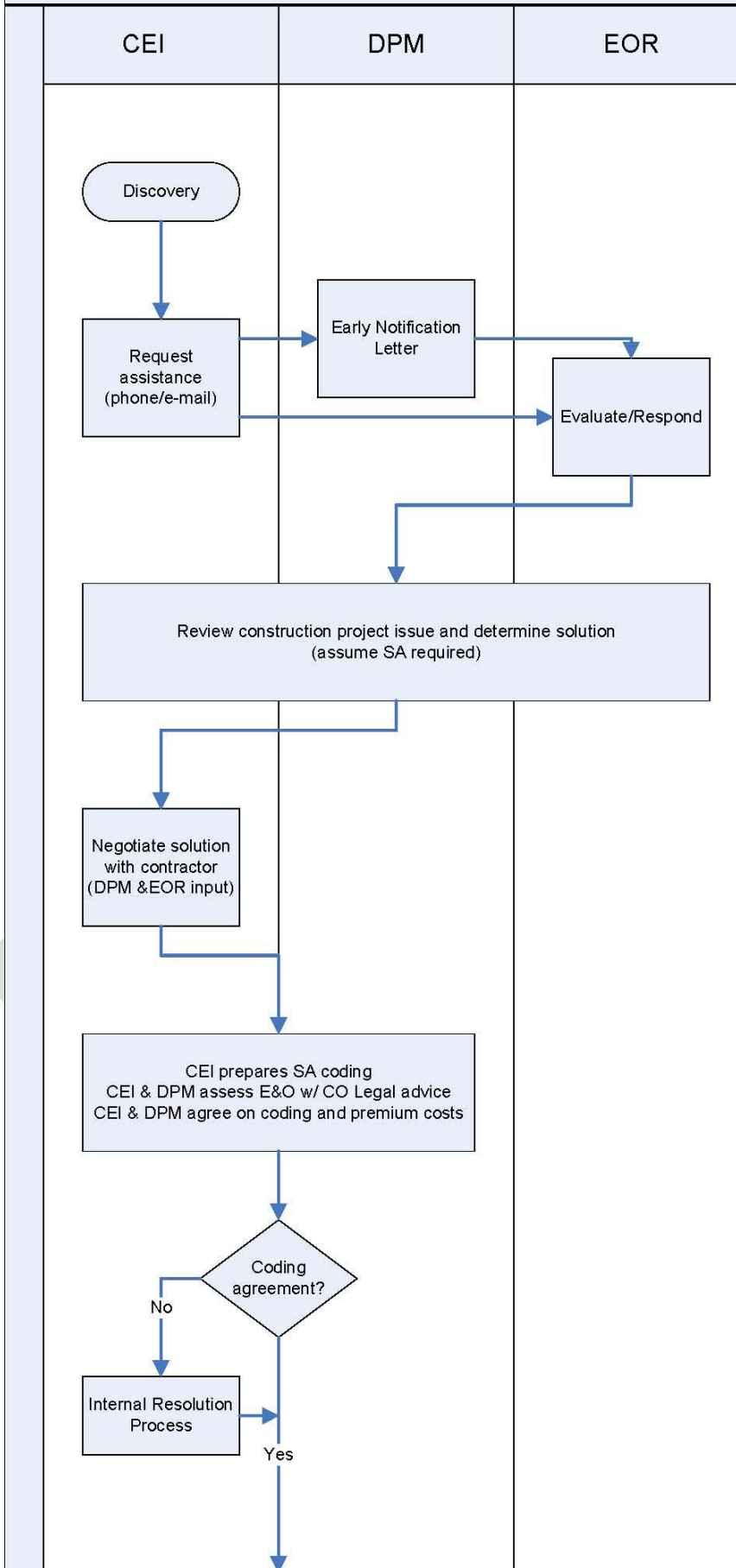
### **Construction & Engineer Personnel**

1. Are you clear on FDOT's E&O process?
2. Are you familiar with FDOT's Construction Project Administrative Manual on Premium cost?
3. Are the circumstances surrounding the premium cost clear?
4. What are premium cost and the interpretation as per CPAM? – FDOT main office
5. Define “non-valuable added work” under premium cost, as per CPAM – FDOT main office
6. Do you know your responsibility in the process?
7. Are you aware of the Construction Directive and the E&O form?
8. What steps do you take when a possible E&O is discovered?
9. How do you determine the need to use the E&O form?
10. Who decides if an E&O form is needed or if the issue is a lack of contractor knowledge?
11. Who initiates the submittal of an E&O form?
12. Do you always use the E&O form to document potential E&Os?
13. If an apparent E&O is identified and resolved through partnering, do you still document the apparent E&O with the form?
14. When a potential E&O is identified, who do you typically notify? How do you notify them?
15. Do you notify the Lead Design Office? If so, how do you notify them?
16. What is the typical timeframe for notification of a possible E&O to the Lead Design Office?
17. If an E&O is discovered, do you consult the Lead Design Office for their input prior to instituting any changes?
18. How do you typically resolve an E&O with the Lead Design Office? Do you meet in the field or correspond through other methods such as phone and email?
19. Is the prime contractor or subcontractor involved in the process?
20. Are the Local Design Office and/or the responsible Design Office typically available and willing to answer questions or meet on the job site in a timely manner?
21. How timely is your response from the Design Offices? What is the typical turnaround time for resolutions?
22. If the project is consultant design, is the consultant typically available to resolve issue? – Section 2.3.1
23. If an E&O form is sent to the Lead Design Office, do you typically receive a reply from the Lead Design office on a timely manner?

24. Is there any particular are of the E&O process you believe works or does not work well?
25. Do you feel the E&O form is a waste of time? If so, why or how can it be improve?
26. Is there any particular part of the E&O process you would like clarification?
27. Do you have any suggestions to improve the E&O process?

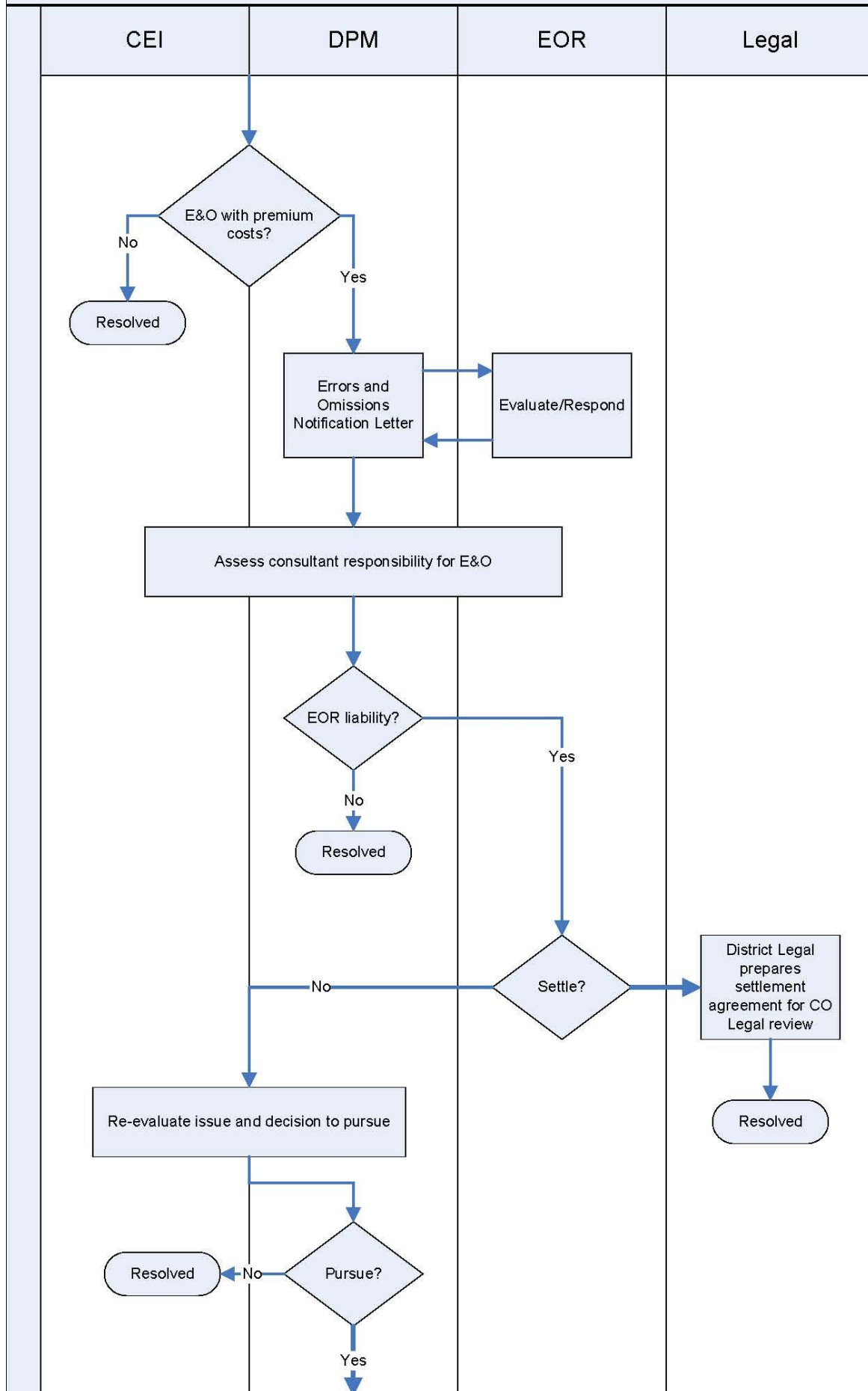
DRAFT

## EOR E&O Resolution Process (1/3)

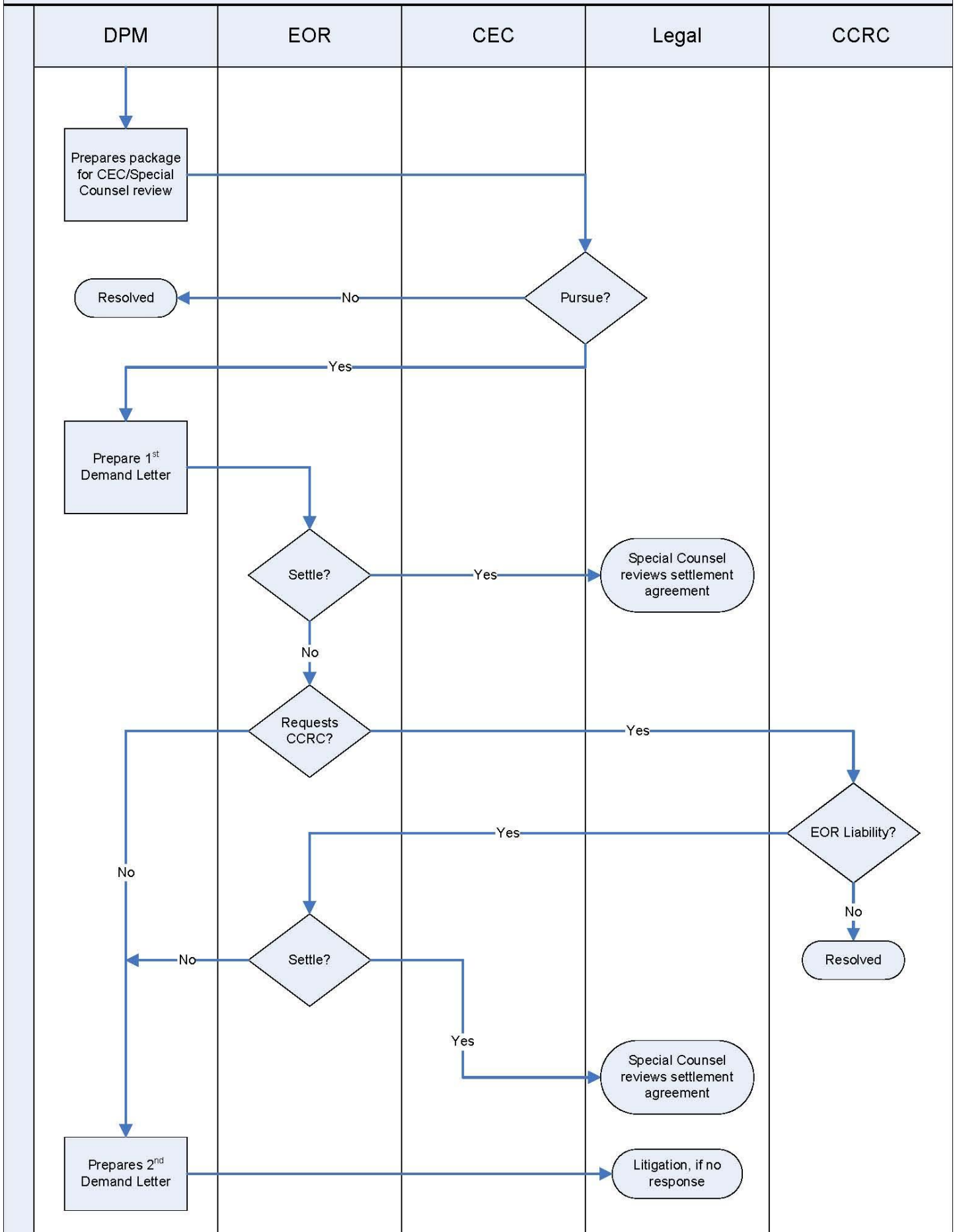




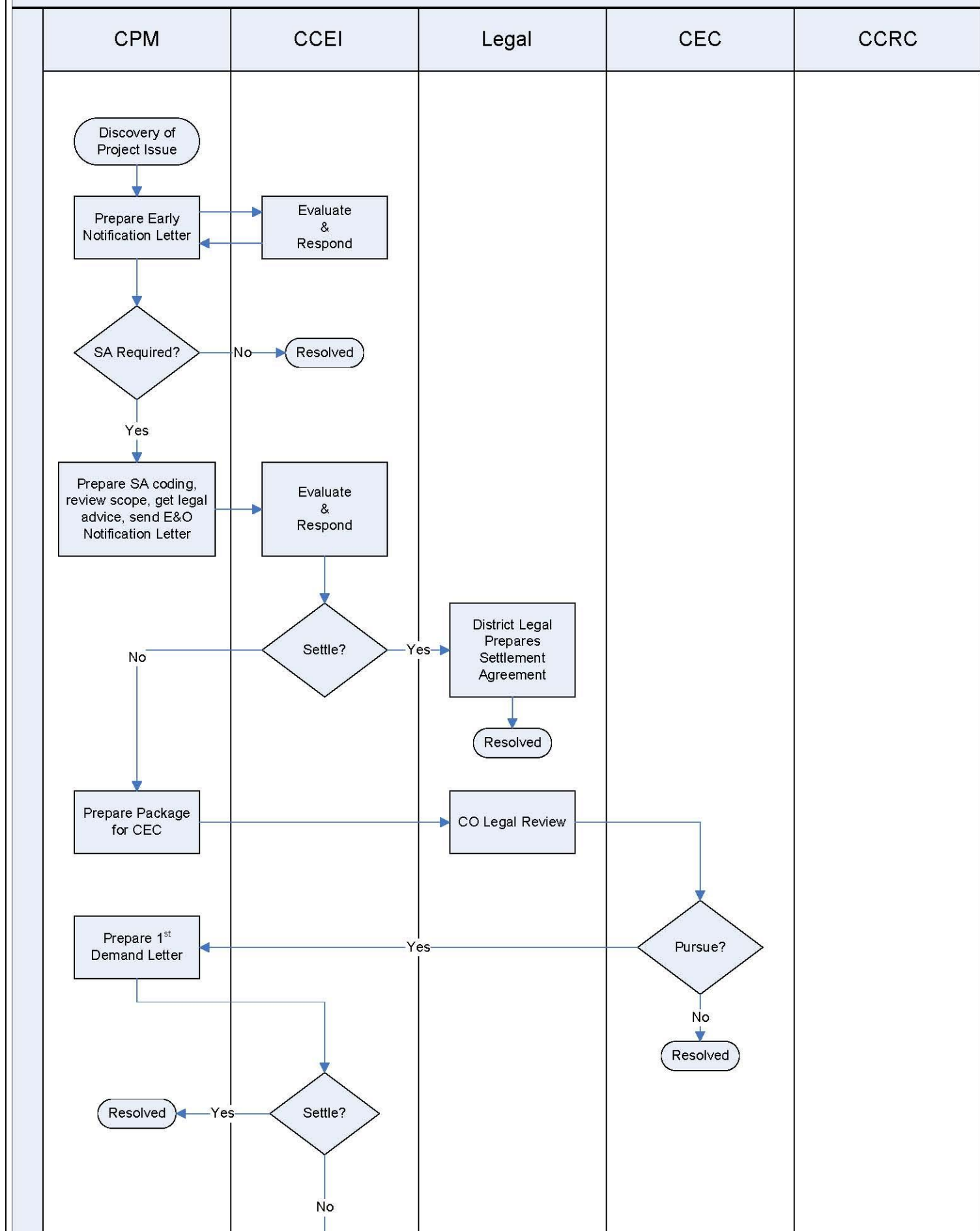
## EOR E&O Resolution Process (2/3)



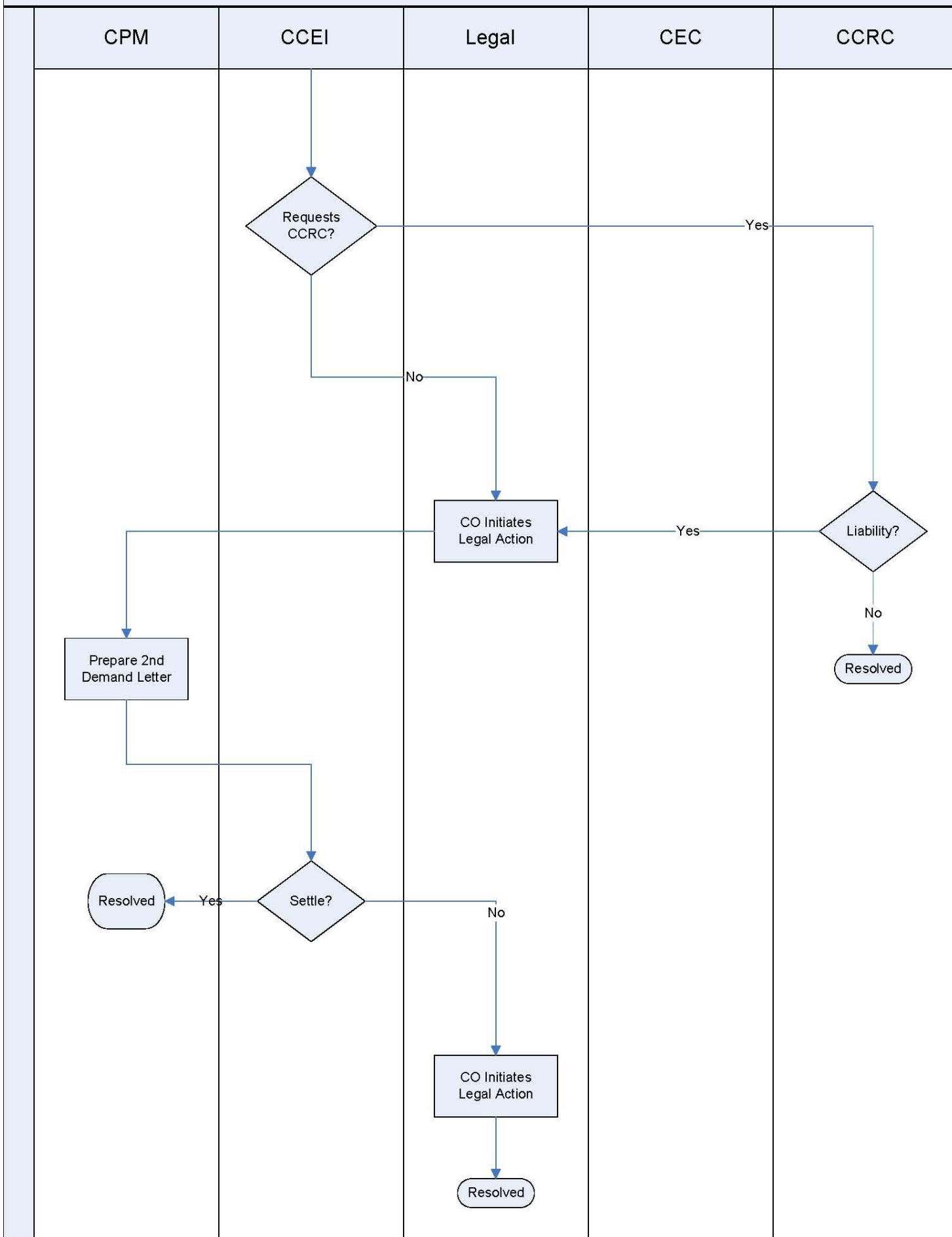
## EOR E&O Resolution Process (3/3)



# CCEI E&O Resolution Process (1/2)



## CCEI E&O Resolution Process (2/2)



## **LIST OF PROJECTS REVIEWED PER DISTRICT**

### **District 2:**

1. **Contract # E2L00, FPI # 21095225201;** SA = \$24,276.93
2. **Contract # T2097, FPI # 20996915201;** SA = \$14,733.66, SA = \$9,316.90, SA = \$10,358.25, SA = \$252.00, SA = \$13,359.68, SA = \$25,005.66, SA = \$27,057.98, SA = \$4,741.36, SA = \$97,354.01
3. **Contract # T2117, FPI # 21324515201;** SA = \$945, SA = \$4,621.86, SA = \$11,143.22, SA = \$1,880,412.05, SA = \$170,139.20, SA = \$8,232.48, SA = \$9,200.17, SA = \$1,535.10, SA = \$3,280.07, SA = \$155,659.53, SA = \$5,683.59, SA = \$9,998.81.
4. **Contract # T2119, FPI # 20927815201;** SA = \$5,641.21, SA = \$59,927.58, SA = \$10,469.51, SA = \$11,940.00, SA = \$59,561.52
5. **Contract # T2196, FPI # 20965955201;** SA = \$81,274.95, SA = \$9,771.36, SA = \$274,645.38

### **District 5:**

1. T5043; Issue Numbers 2007-000348, FPI 24249315201, SA = \$28,5801.71, premium cost = \$28,580.71
2. T5071; Issue Numbers 2007-000544, FPI 24234115201, SA = \$16,790.50, premium cost = \$16,790.50
3. T5072; Issue Numbers 2007-000580, 2007-00581, 2007-000584, 2008-000673 (FPI 24271615201) SA = \$145,097.68, premium cost = \$45,034.51
4. **T5159; Issue Number 2008-000792?**
5. T5102; FPI 24248425201(SA for \$8,955.75), FPI 24248425201 (SA for \$46,657.00), FPI 24248425201 (SA \$37,354.73), FPI 24248425201 (SA \$9,874.79), premium cost = \$34,530.43
6. T5109; FPI 23842415201(SA for \$69,003.14), FPI 23842415201 (SA for \$25,447.05), FPI 23842415201 (SA for \$97,503.88), premium cost = \$77,824.28
7. T5159; FPI 40846315201 (SA for \$32,331.76), premium cost = \$3,416.46

**District 6:**

1. T6047; Financial Project ID 40883415201; SA = \$104,815.65
2. T6057; Financial Project ID 40763315201; (A.) Work Order = \$50,000.00 (Premium cost = \$9,240.00), (B.) Work Order = \$50,000.00 (premium cost = \$4,526.01) (C.) Work Order = \$50,000.00 (Premium cost = \$2,215.64)
3. T6060; Financial Project ID 25054825201; SA = \$16,500.00
4. T6061; Financial Project ID 41275425201; SA = \$309,812.56
5. T6074; Financial Project ID 24964015201; SA = \$900,699.87 & SA = \$10,817.58
6. T6102; Financial Project ID 41247015201; SA = \$71,481.34
7. T6138; Financial Project ID 40558285201; SA = \$8,507.25 & Work Order = \$20,580.00 (Premium cost = \$20,580.00)

**District Two Review**  
**Errors and Omissions (E&O) Process Review of the**  
**Florida Department of Transportation (FDOT)**  
**District Two, Lake City**

Review Performed: February 25 & 26, 2010

Report by: Federal Highway Administration (FHWA), Florida Division Office

FHWA Review Team:

Phillip Bello, District Transportation Engineer

Marvin Williams, Major Project Engineer

BSB Murthy, District Transportation Engineer

FDOT District Contacts:

Shawn Murphy, FDOT Central Office Project Management

Michael Sandon, FDOT D-2 Construction Office

Hillary King, FDOT D-2

Bobbie Goss, FDOT D-2 Production Office

Richard Moss, FDOT D-2 District Consultant Project Management

Nick Tsengas, FDOT D-2 Operations

Tim Ruelke, FDOT D-2 Construction

Jim Pitman, FDOT D-2 Design Office

Joyce Brown, FDOT D-2 Director of Operations

*(Attendee list is shown in page 69)*

Review Location:

FDOT District Two, Lake City

Projects Selected and Reviewed

The Errors and Omissions (E&O) review team selected the following projects and reviewed at the District Two HQ.

1) Contract # E2100

FPI # 210952-2-52-01

SA Amount \$24,276.93

2) Contract # T2097

FPI # 2099691-52-01

SA One Amount \$14,733.66

SA Two Amount \$9,316.90

SA Three Amount \$10,358.25

SA Four Amount \$252.00

SA Five Amount \$13,359.68

SA Six Amount \$25,005.66

SA Seven Amount \$27,057.98

SA Eight Amount \$4,741.36

SA Nine Amount \$97,354.01

3) Contract # T2117



FPI # 213245 1-52-01

SA One Amount \$945.00

SA Two Amount \$4,621.86

SA Three Amount \$11,143.22

SA Four Amount \$1,880,412.05

SA Five Amount \$170,139.20

SA Six Amount \$8,232.48

SA Seven Amount \$9,200.17

SA Eight Amount \$1,535.10

SA Nine Amount \$3,280.07

SA Ten Amount \$155,659.53

SA Eleven Amount \$5,683.59

SA Twelve Amount \$9,998.81

4) Contract # T2119

FPI# 209278 1-52-01

SA One Amount \$5,641.21

SA Two Amount \$9,927.58

SA Three Amount \$10,469.51

SA Four Amount \$11,940.00

SA Five Amount \$59,561.52

5) Contract # T2196

FPI# 209659 5 -52-01

SA One Amount 81,275.95

SA Two Amount \$9,771.36

SA Three Amount \$274,645.38

*(A list of projects reviewed and description of each project with Contract Number, FPID, etc are shown in appendix "A" page 20)*

#### Prepared Questions

Several questions were prepared in advance by the E&O process review team and those questions were asked with the District staff to obtain their input.

*(A list of prepared questions is shown in appendix "A" page 20)*

#### Review Findings

The District staff has maintained a good filing system

The demonstration given by the District staff on tracking system, coding premium costs, actions taken etc was very helpful.

There is a single point of contact exists in District Two who is responsible for coding and maintaining the project files both hard copy and E copy was very helpful and should be commended for their efforts.

Regardless of the amount criteria, (small amount or big amount) the district staff has taken actions in obtaining the checks from the design consultant firms and upholding the E&O Policy when errors were identified in the plans.

It was pleased to note that the District staff have contacted the design firms systematically through official correspondences, certified mail etc, to document and to build up the case on a project by project basis to pursue the premium costs.

The district design team takes the lead in collecting the plan errors coded by the field staff, identifying quantity difference in plans, premium costs coded on SA etc, and follows through all the way to close the project file.

District staff has made an internal unwritten policy that it does not accept any type of in kind services from the design firms when premium costs are documented.

District gives an opportunity to the EOR (Engineering of Record) to come up with a solution regarding plans error, design error that has been already documented.

District does not have any minimum threshold to waive the plans error regardless of the amount. The review team was able to see a copy of the check that was collected from a firm in the amount \$300.

Even though the amount is small and if it is costly to the department to collect the money still the District staff pursues the case and goes after the design consultants to collect the money and the District is very successful in this area.

Many a times the design firm writes the check to the FDOT District Two for smaller amount and also amount in the range of \$25 to \$100k without going through their insurance carriers. This may be to avoid higher premium costs and to avoid increase in their insurance premium.

Majority of the time the Errors and Omissions have been brought at the partnering secession to discuss the pros and cons.

When a letter is sent to the design consultant 10 day responses mentioned for a written reply. This has worked very well to the district in speeding the cases.

If a resolution cannot be reached at the district level then contact is made to the Central Office and their Legal Section for further clarification. District Legal and Central Office Legal section may involve on premium costs and to settle the case if deemed.

The E&O Review Team were pleased with the complete operation of E&O Policy in D-2. It is very difficult to come up with any suggestions at this point since all findings lead to best practices and towards positive action.

The D-2 staff was very cooperative in explaining the E&O Process.

A large amount of check (in excess of million dollars) has been obtained from the Consultant Insurance Company. This was based on the errors were found after the

construction was completed and later it was found that the elevation of a completed pond work was incorrect.

It is E&O Review team observation that D-2 has a systematic way of following the E&O Policy and documenting the premium costs on a case by case.

The team was very much impressed with the D-2 operation and implementation of E&O policy and procedures.

The District staff maintains the good relation with design consultants and the review team did not get any negative feedback on this item.

*(See Appendix “B” page 72 for project related correspondences and for copies of checks received from Engineering firms related premium costs).*

### Recommendations

After reviewing the records and communicating with District staff there was nothing to add on recommendations other than that D-2 should be commended for their efforts in collecting the premium costs.

D-2 may want to publish a small manual explaining the internal policy and steps taken to collect the money from each design consulting firm when errors were found and documented and the support received from the District Secretary and the Administrative staff.

A one day work shop by D-2 staff for other concerned districts on E&O process and with case studies and Q& A session may be an ideal situation to improve the process. (If it is working in D-2 why it is not working in other districts in the same footprint should be the message of this workshop) What steps should be taken to go after the design consultants to collect the money when errors were made, how to document it and to follow up with case studies, and at the same time how to maintain a good relation with the design consulting firms should be the theme of the one day work shop.

### Conclusion

Overall the District Two staff follows the E&O Policy and it is implemented the way it was intended. Maintaining the good filing system, tracking the premium

costs, documenting and collecting the money are very impressive and the District should be commended in all these areas.

D-2 prefers to operate the E&O process with one or two authorized personnel to handle the tracking system. This is with reference to coding, changing and updating project related data, updating the E&O related up to-date information. It is noted that the FDOT E&O policy may be in contradictory the way D-2 handling the tracking system. However it is the review team observation that the way the District handling the tracking system by few individual has worked well and may be the policy itself should be looked into for a revision in this area.

### Best practices

As cited in the findings there are many best practices in D-2 and few are listed below;

- a) Communication between the design staff and construction staff is very good.
- b) The E&O Policy is followed very well and the District is very successful in recovering the premium cost.
- c) Files are maintained with up to date correspondences and the copies of checks recovered from the consultant were also available; see Appendix “B” page 72).
- d) Single point contact and dedicated employee to feed the data in the tracking system has made a big difference and brought good results.
- e) The district goes after the design firms in collecting the amount (small in the range of \$300 or big amount in millions) when an error is documented.
- f) If legal action is necessary the district pursues the case/s in collecting the premium costs.

## **District Five Review**

### **Errors and Omissions (E&O) Process Review of the Florida Department of Transportation (FDOT)**

#### **District Five, Deland**

**Review Performed:** March 23, 2010 to March 25, 2010

**Report by:** Federal Highway Administration (FHWA)

Florida Division Office

#### **FHWA Review Team:**

Phillip Bello, District Transportation Engineer

Marvin Williams, Major Project Engineer

#### **FDOT District Contacts:**

Shawn Murphy, FDOT, Project Management, Central Office

Alida Schmilt, FDOT, D-5

Frank O'Dea, FDOT Construction, D5

Amy Scales, FDOT Consultant Management

Annette Brennan, FDOT, Design, D5

Suzanne Phillips, FDOT, Consultant Project Management, D5

George Borchik, FDOT, Design, D5

Kara Adams, FDOT, Construction, D5

Beata Stys-Palaza, FDOT, Consultant Project Management, D5

Steve Lange, Construction Office, Site Manager

*(Attendee list is shown on page 69)*

**Review Location:** FDOT District Five, Deland, FL

**Projects Selected and Reviewed:**

The Errors and Omissions (E&O) review team selected the following projects and reviewed at the District Six HQ.

1) Contract # T50453

FPID # 242493-1-52-01

(A) SA Amount \$28,580.71(PC \$28,580.71)

2) Contract # T5071

FPID # 242341-1-52-1

Work Order Amount \$16,790.50 (PC \$16,790.50)

3) Contract # T5072

FPID # 242716-1-52-01

SA \$460,859.66 (PC \$ 454,500.00)

4) Contract # T5072

FPID # 242716-1-52-01

WO \$14,421.44 (PC \$ 14,421.44)

5) Contract # T5159

FPID# 249640 1-52-01

SA\$32,331.76

Contract # T5159

FPID# 408461-1-52-01

WO \$8,042.28 (PC \$8,042.28)

6) T5102

FPID # 242484-2-52-01

SA Amount \$8,955.75

T5102

FPID # 242484-2-52-01

SA Amount \$46,657.70

T5102

FPID # 242484-2-52-01

SA Amount \$37,354.73

T5102

FPID # 242484-2-52-01

SA Amount \$9,874.79

10) T5109

FPID# 238424-1-52-01

SA Amount \$69,003.14

T5109

FPID# 238424-1-52-01

SA Amount \$25,447.05



T5109

FPID# 238424-1-52-01

SA Amount \$97,503.88

*(A list of projects reviewed and description of each project with Contract Number, FPID, etc are shown in appendix "A" page 20)*

### Prepared Questions

Several questions were prepared in advance by the E&O process review team and those questions were asked with the District staff to obtain their input.

*(A list of prepared questions is shown in appendix "A" page 20)*

### General

The District staff was knowledgeable on Errors and Omissions (E&O) Policy and Construction Projects Administration Manual (CPAM) procedures, Work Orders, Supplemental Agreements coding premium costs etc on all federal aid projects.

The District staff gave a perspective view of the E&O policy and gave answers to all prepared questions.

### Review and Findings

According to E&O policy the District should be sending initial notification on project supplemental agreements identified as premium costs. Communication should be going to the design consultants via registered mail. During the process review FHWA process review team was not able to see any official documents in the form of a letter of correspondences or responses from the design consultant. In other words there was no initial notification letter in the project file. These are very clear in FDOT's E&O policy signed by the Secretary.

Based on the input received from the District staff, Project personnel were indentifying E&O and doing early communication with the Consultants, but once it was established that PC was determined and the Consultants rejected the

determination, all communication stopped between the District and the Consultant concerning the issue.

In 2005 after the policy was approved and District 5 began pursuing Premium Cost, the District stopped pursuing Premium Cost caused by Errors & Omissions. It was stated that D5 legal section ordered the District to stop the effort to recover Premium Cost. D5 provided no documentation to backup the reason they stop pursuing Premium Cost.

The majority of the projects reviewed that had premium cost, were signed as non Federal-aid participation by the FHWA engineer. This appears to show that funds that could be used on future projects are going unrecovered by FDOT.

The E&O process review team did not see any copies of the check that should have been received from the design consultants due to the plan errors, and premium costs on project specifics. The files did not have any documents of this nature.

Recovering premium costs for both design and construction is a state statute and it is a Department policy, but the District staff did not pursue to collection any identified PC since the policy was signed in 2004.

The FHWA E&O process review team was unable to connect the dots with the information supplied by the district with the available information on the file.

The District does not use the consultant past performance grades in the consultant selection process.

### **Best Practices**

Following items were noted based on the interview questions that the District staff has committed to produce quality PS&E packages prior to letting.

Project Administrators from Construction Unit are involved on PS&E package review at early stage of the project.

The line of communication between construction office and the design office is very good. The team work between the design unit and the construction unit has helped to resolve issues in the early stage of the development of project plans.

Constructability issues are being reviewed in the early stage and this has helped to avoid many plan errors.

All Supplemental Agreements and/or Work Orders are distributed to the construction project managers for information purposes to avoid similar occurrence on upcoming projects.

## **Recommendations**

The Department staff definitely in need of training to implement the Errors and Policy procedures, tracking system, coding, and take actions on a timely manner when premium costs are coded in the Supplemental Agreements.

When it comes to Errors and Omissions it appears that the District is in need of periodic training. The training is necessary because the staff changes. How to address the policies and implementing uniformly should be the goal of training. This could be as little as a day program or half a day work shop with a Q&A session. Case studies are recommended during training to educate the staff on what to look for, document and code, and when to contact the design consultant on plans error and premium costs etc. Training in each district should improve the E&O process.

Overall a certification on E&O process would be helpful to assure that all participants meet the minimum training requirements. In other a words certification process would improve the process.

Whether a small amount or large amount the District should document the findings from each project and follow through with the design consultants and document the resolution to the plan error items in a systematic way.

An up to-date project files with initial notification letters, proper coding forms, and transmittal documents along with dates in the RTS and attachments must be maintained to comply with the E&O policy.

Additional staff and/or dedicated staff exclusively are needed to implement the E&O policies. This staff would allow for a smooth operation as well as to close the project cases. They would serve as a point contact to follow up with tracking, coding, letter correspondences (reply to received and follow up with responses

etc.). Also, at the end the process collect the monies received from the consultants based on the premium costs identified on project specific and design errors documented. This activity would pay off for this specific position.

At the time of closeout meeting it was agreed that the district staff will improve the process and implement the E&O policies.

During the interview it was noted that the new E&O policy calls for legal section to get involve at the initial stages of the E&O process whenever premium costs are identified by the CEI staff. This has caused a greater concern at the District level. It is the observation of the process review team that the District staff should be empowered to initially handle each case to the point of a formal PC determination before the legal section gets involved in the process.

### **Conclusion**

Overall the District Five staff follows the E&O Policy but they were not able to complete the dots and follow through the process in full. Although the filing system exists formal and complete correspondences with the Department and the Design Consultants were missing. The E&O process review team recommends that the District is in need of training with case studies to improve the process.. It is the review team conclusion that the District staff should pursue the design consultants to collect premium costs as well as document finding and correspondences in the RTS of all design and CEI error and omissions. Making phone calls to resolve the Errors and Omissions is practical, but each decision should be followed with a formal letter or email

**District Six**

**Errors and Omissions (E&O) Process Review of the  
Florida Department of Transportation (FDOT)**

**District Six, Miami**

**Review Performed:** May 18<sup>th</sup> to May 20<sup>th</sup> 2010

**Report by:** Federal Highway Administration (FHWA)

Florida Division Office

**FHWA Review Team:**

Phillip Bello, District Transportation Engineer

Marvin Williams, Major Project Engineer

BSB Murthy, District Transportation Engineer

**FDOT District Contacts:**

Shawn Murphy, FDOT Central Office Project Management

Mark Croft, FDOT D-6 Construction Engineer

Nettie Crusaw, FDOT Construction

Teresa Alvarez, FDOT Consultant Management

Gary Donn, FDOT

Harold Desdunes, FDOT Design

Adriana Manzanares, FDOT Consultant Management

Ana Arvelo, FDOT Consultant Management

Erenia Nagid FDOT Design Office

Ali Toghiani, FDOT Consultant Management

Gary Donn, MIC Program FDOT

Mario Cabrera, D-6 Assistant District Construction Engineer

Emilio Zamora FDOT D-6 Project Administrator

*(Attendee list is shown on page70)*

**Review Location:**

FDOT District Six, Miami, FL

Projects Selected and Reviewed

The Errors and Omissions (E&O) review team selected the following projects and reviewed at the District Six HQ.

1) Contract # T6047

FPID # 408834 1-52-01

SA Amount \$104,815.65

2) Contract # T6057

FPID # 407633 1 52 01

(B) Work Order Amount \$50,000 (Premium Cost \$9,240)

(C) Work Order \$50,000 (Premium Cost\$4,526.01)

(C) Work Order \$50,000 (Premium Cost \$2,215.64

3) Contract # T6060

FPID # 250548-2-52-01

SA \$16,500

4) Contract # T6061

FPID# 412754 2-52-01

SA Amount \$309,812.56

5) Contract # T6074

FPID# 249640 1-52-01

SA One Amount \$900,699.87

SA Two Amount \$10,817.58

6) T6102

FPID # 412470-1-52-01

SA Amount \$71,481.34

7) T6138

FPID#40558 2 8-52-01

SA Amount \$8,507.25

Work order \$20,580 (Premium Cost \$20,580)

*(A list of projects reviewed and description of each project with Contract Number, FPID, etc are shown on page 20)*

### Prepared Questions

Several questions were prepared in advance by the E&O process review team and those questions were asked with the District staff to obtain their input.

*(A list of prepared questions is shown on page 20)*

### General

The District staff was knowledgeable on Errors and Omissions (E&O) Policy and Construction Projects Administration Manual (CPAM) procedures, Work Orders, Supplemental Agreements coding premium costs etc on all federal aid projects.

The District staff gave a perspective view of the E&O policy and gave answers to all prepared questions.

## **Review and Findings**

Based on the input received from the District staff, Project Administrators are involved on PS&E package review at early stage of the project development.

D-6 predominantly follows the services ‘in kind’ to close the project that has been coded as premium costs. However the E&O process review team did not see any supporting documents for additional work done by the design consultants. Only verbal communications were received from District staff in this regard and no supporting documents were available in the project file.

The district felt that it is not worth pursuing with the design consultant/s for smaller amount when a plan error exists. The threshold in D-6 is \$25,000 or less.

According to E&O policy the District should be sending initial notification on project supplemental agreements identified as premium costs. Communication should be going to the design consultants via registered mail. During the process review FHWA process review team was not able to see any official documents in the form of a letter correspondences and responses from the design consultant. In other words there was no initial notification letter in the project file. These are very clear in the FDOT E&O policy, section 4.3, signed by the Secretary.

The E&O process review team did not see any copies of the check that should have been received from the design consultants due to the plan errors, and premium costs on project specifics. The files did not have any documents of this nature and were maintained very poorly. According to the District staff they have handled many of these plan errors by making phone calls to the design consultant and resolved the issues which are highly contradictory to the E&O Policy.

The SA committee makes the decision to exempt projects that reaches the threshold of \$25,000 or less. \$25,000 threshold at the District level is an unwritten policy. No MEMO was found during the interview or during discussion.

The SA committee reviews the errors and omissions coded and make the final decision. What was coded in the field on an SA may have a different opinion by the SA committee.



Recovering premium costs for both design and construction is a state statute and it is a Department Policy but the District staff did not pursue to connect the dots.

### **Best Practices in District Six**

Following items were noted based on the interview questions that the District staff has committed to produce quality PS&E packages prior to letting.

Project Administrators from Construction Unit are involved on PS&E package review at early stage of the project.

The line of communication between construction office and the design office is very good. The team work between the design unit and the construction unit has helped to involve at early stage of the development of project plans.

Constructability issue has been looked from the early stage and this has helped to avoid any plan errors.

District feels that they are strong on plans review at every stage (30%, 60%, and 90%) of the project development before sending the final PS&E package to Central Office for letting.

Precautions are taken at front in producing quality plans.

All Supplemental Agreements and/or Work Orders are distributed to the project managers for information purposes to avoid similar occurrence on upcoming projects.

The District has taken actions to implement that all utility lines are relocated by the utility department before the contractor shows up to the job site. This is to avoid any utility conflicts between the utility companies and the contractor. The department has taken precautions based on their past experiences.

Construction team and Project Managers work hand in hand to resolve any issues at front.

## **Recommendations**

The Department staff definitely in need of training to implement the Errors and Policy procedures, tracking system, coding, and take actions on a timely manner when premium costs are coded in the Supplemental Agreements.

When it comes to Errors and Omissions it appears that the District is in need of periodic training. The training is necessary because the staff changes. How to address the policies and implementing uniformly should be the goal of training. This could be a day program or half a day work shop with Q&A secession. Case studies are recommended during training to educate the staff what to look and what to track in coding and when to contact the design consultant on plans error and premium costs etc. Training in each district definitely helps to improve the E&O process.

Overall a certification on E&O process would be helpful to meet the minimum training requirements for concerned parties. In other words certification process may improve the process.

Small amount or big amount the District should document the findings from each project and follow through with the design consultants to resolve plan errors items in a systematic way.

An up to date project file with initial notification letters, proper coding, and updating the tracking system must be maintained to uphold the E&O policies.

Additional staff and/or dedicated staff exclusively to implement the E&O policies is recommended for better coordination and for smooth operation as well as to close the project cases. This would serve as one point contact and to follow up with tracking, coding, letter correspondences, reply received and follow up with responses etc. At the end the money received from the design consultant based on the premium costs identified on project specific and design errors documented would pay off for this specific position.

The FHWA E&O process review team was unable to connect the dots with the information supplied by the district with the available information on the file.

The E&O process team was able to collect satisfactory information verbally based on the interview held with the district staff team.

At the time of closeout meeting it was agreed that the district staff will improve the process and implement the E&O policies.

During the interview it was noted that the new E&O policy calls for legal section to involve at the initial stage itself whenever a premium costs are identified by the CEI staff. This has caused a greater concern at the District level. It is the observation of the process review team that the District staff should be empowered to handle each case as needed before legal section can be involved on premium costs. The policy itself may be revisited on this area to remove some obstacles.

### **Conclusion**

Overall the District Six staff follows the E&O Policy but they were not able to complete the dots to follow through the process in full. Although the filing system exists formal and complete correspondences with the Department and the Design Consultants were missing. The E&O process review team recommends that the District is in need of training with case studies and to improve the process in full. It is the review team conclusion that the District staff should go after the design consultants to collect the premium costs as well as the design error costs upon documentation. \$25,000 threshold and making phone calls to resolve the Errors and Omissions is not the ideal solution and does not uphold the FDOT Policy.

# E & O Review - D2

Feb. 25, 2010

- 1) PHILLIP Bell - FHWA - 805 <sup>942-9650</sup> ~~888-9628~~
- 2) MICHAEL SANDOW - FDOT DISTRICT II CONSTRUCTION
- 3) Hillary King 386-961-7577  
FDOT - 386-961-7305
- 4) Bobbi GOSS FDOT 386-758-3769 Production
- 5) Shawn MURPHY FDOT- CO 850.414.4783 Proj. Mgmt.
- 6) BSB MURPHY FHWA (850) 942-9650
- 7) Marvin L. Williams FHWA (850) 942-9650 Major Projects Engineer
- 8) Richard Moss FDOT 386 961 7823 District Consultant Project Management Engineer
- 9) NICK TSENKAS FDOT 386 961-7875 Operations
- 10) Tim Ruelke FDOT 386 961 7730 Construction
- 11) Jim Pitman FDOT 386-961-7583 Design
- 12) JOYE BROWN FDOT 386-961-7840 DIRECTOR OF TRANSPORTATION SUPPORT

3/23/2010

E&O Review  
D.5

Phillip Bello  
Marvin L. Williams - FHWA  
Alida Schmitt - FDOT  
Shawn MURPHY - FDOT CO  
FRANK O'Dea - FDOT DS  
GEORGE A. BORCHIK FDOT DS  
Annette Brennan FDOT OS  
Suzanne Phillips FDOT DS

3/24/2010

GEORGE A. BORCHIK  
Marvin L. Williams FHWA  
Phillip Bello "  
Shawn MURPHY FDOT-CO  
Alida Schmitt FDOT  
FRANK O'DEA  
Amy Scales (TELEPHONE)  
KARA ADAMS ( " )  
Becky Slys-Palasz FDOT-PM  
Steve Lange FDOT - construction, Site Manager

May 18, 2010

E&D Review

D6

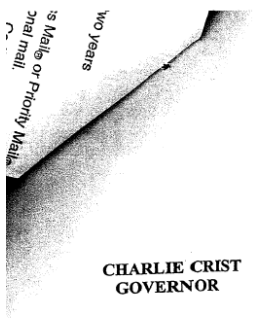
Phillip Bello	FHWA
Shawn Murphy	FDOT
Mark Croff	FDOT Construction
NETTIE CRUSAW	FDOT Construction
Teresa Alvarez	FDOT Consult. Manage.
GARY L. DONN	FDOT
BSB MURPHY	FHWA
Marvin L. Williams	FHWA
HAROLD Desdunes	FDOT
Adriana Manzanares	FDOT Consultan Management
Ana T. Arvelo	FDOT Consultant Management
ERENIA NAGID	FDOT INT. DESIGN
Ali R. Togiani	FDOT Consult. management
GARY L. DONN	FDOT Mic Program
	May 19, 2010
MARIO L. CASRETA	FDOT CONSTRUCTION
Emilio Zamora	FDOT CONSTRUCTION
JASON CHANG	FDOT Consultant Management

## APPENDIX “B”

- *Project related correspondences, discovery letters, response letters, checks received from Engineering firms, etc.....Page 72*
- *End of report.....Page 94*

DRAFT

Sample # 1: The FDOT - D.2 Correspondences to the Design Consultant



**Florida Department of Transportation**

CHARLIE CRIST  
GOVERNOR

1109 South Marion Avenue  
Lake City, FL 32025

STEPHANIE C. KOPELOUSOS  
SECRETARY

October 7, 2008

Thomas W. Stoner, P.E.  
H.W. Lochner, Inc.  
13577 Feather Sound Drive, Suite 600  
Clearwater, FL 33769

#1

Re: SR-9A / SR-202 (JTB Interchange)  
Financial Project ID 209278-1  
Contract No. C-6836  
Issue No. 2008-000885

Dear Mr. Stoner:

Project issues have been identified in the referenced contract that require immediate attention. The Department respectfully requests your assistance to fully evaluate the following issue and determine the appropriate course of action to continue contract administration:

**During the first deck pour, one of the two girders experienced uplift at the far end bent and was raised slightly off the bearing. During the course of lowering the girder the Teflon coating was damaged.**

Issues of this nature may impact costs and contract time; please give this your immediate and full consideration. Compensation for on-site participation and any additional engineering services may be billed as post-design services, unless the project issues are caused by Errors and Omissions. Please track all additional services separately for potential compensation and submit documentation with each invoice showing all hours and costs incurred addressing this issue. Thank you for your prompt assistance. Please respond within ten business days of receiving this letter. In your response please state if you concur that this is a designer error/omission; if you do not concur please explain.

Sincerely,

Richard Moss, P.E.  
District Consultant Project Management Engineer

[www.dot.state.fl.us](http://www.dot.state.fl.us)

10/10/08  
10/10/08  
10/10/08



# LOCHNER

H.W. Lochner, Inc.  
13577 Feather Sound Drive  
Suite 600  
Clearwater, FL 33762

T 727.572.7111  
F 727.571.3371

hwlochner.com

October 20, 2008

Mr. Richard Moss, P.E.  
District Consultant Project Management Engineer  
Mail Station 2002  
Florida Department of Transportation  
1109 South Marion Avenue  
Lake City, Florida, 32025

Subject: SR-9A / SR 202 Interchange  
Financial Project ID 209278-1  
Contract No. C-6836  
Issue No. 2008-000885

Dear Mr. Moss:

This letter is in response to your letter dated October 7, 2008. Our sub-consultant E.C. Driver is the Engineer of Record for the bridge deck design and bearing details. Attached is a letter from them dated October 18, 2008, indicating that the damage to the bearing Teflon coating is related to the contractor's means and methods, rather than a designer error/omission.

Should you need any further assistance, please feel free to contact Dwayne Kile or myself at anytime.

Sincerely,  
H.W. Lochner, Inc.



Thomas W. Stoner, P.E.  
Vice President

#2

attachments

cc: L. Maldonado  
J. Phillips

**Box, Jack**

---

**From:** Jim\_Phillips@ecdriever.com  
**Sent:** Saturday, October 18, 2008 8:53 AM  
**To:** Box, Jack  
**Cc:** Luis\_Maldonado@URSCorp.com  
**Subject:** Re: Fw: JT Butler E&O Discovery - bearing damage  
**Attachments:** response to E&O Issue 2008-000885 101808.pdf

Jack:

Attached is our letter response to the subject issue.

James M. Phillips III, P.E.  
E.C. Driver & Associates, Inc.  
500 N. Westshore Blvd., Ste 500  
Tampa, FL 33609  
(813) 282-9886  
(813) 282-9873 (fax)

This e-mail and any attachments are confidential. If you receive this message in error or are not the intended recipient, you should not retain, distribute, disclose or use any of this information and you should destroy the e-mail and any attachments or copies.



**Consulting Engineers**

Boca Raton  
Tallahassee  
Tampa

October 18, 2008

Mr. John Box, P.E.  
H.W. Lochner, Inc.  
13577 Feather Sound Drive, Suite 600  
Clearwater, Florida 33762

RE: SR 9A/SR 202 Interchange  
Financial Project ID 209278-1  
Contract No. C-6836  
ECDA No. 15197874  
Issue No. 2008-000885

Dear Mr. Box:

It appears from the information provided by the CEI (see attached email dated April 21, 2008 from Bryan Rerko of Parsons to Chris Ray of HW Lochner) that the bearing's Teflon surface was damaged when the Contractor lowered the box girder to reseal the bearing. Although the EOR worked with the CEI and Contractor to expedite a plan to lower the girder when uplift was observed, the means and methods employed in the construction operation are the responsibility of the Contractor. In accepting the Contractor's proposal to perform this work, the EOR was only exercising their responsibility for verifying that the work conforms with the design concept of the project and with the information given in the Contract Plans and Specifications, not the Contractor's means and methods. In this case, the damage is either a result of the Contractor's means and methods used to lower the beam and reseal the bearing or inadequate care exercised by the Contractor in performing the work. Therefore, we believe the Contractor is responsible for the cost of repairing the bearing.

Regarding the initial girder uplift, EC Driver prepared the deck pouring sequence plans and is responsible for the information included on those plans. If our plans contained an error or omission, and as a result the bearing was damaged when the girder lifted, then we would accept responsibility for our role in that damage. Similarly, if our plans contained an error or omission, and as a result FDOT felt obligated to direct the contractor to lower the girder and reseal the bearing, then we would accept the responsibility for our role in the additional work required to reseal the bearing. However, to the best of our knowledge, the bearing was damaged while the contractor was lowering the girder and not as a direct result of the uplift. If the damage had been present prior to the lowering a different approach would have been taken and lowering may not have been implemented. The lowering of the girder was implemented to avoid damage to the bearing.

In summary, we believe that the bearing damage is a result of construction means and methods and performance of the construction work by the contractor. Should you have any questions, please feel free to contact me.

Sincerely,

EC Driver & Associates, Inc.

James M. Phillips III, P.E.  
Vice President

cc: L. Maldonado / file

E:\Projects\8454 JT Butler\Correspondence\From ECDriver\response to E&O Issue 2008-000885 101808.doc

500 North Westshore Boulevard, Suite 500 ■ Tampa, Florida 33609 ■ (813) 282-9886 ■ Fax (813) 282-9873



"Rerko, Bryan" <Bryan.Rerko@parsons.com>

04/21/2008 02:15 PM

To "Ray, Chris" <cray@hwlochner.com>

cc "Michael Moilanen" <Michael\_Moilanen@URSCorp.com>

bcc

Subject RE: 209278-1-52-01 Alignment Repair Response

It went well and Superior was able to release the attached I-Beams from the bottom flanges. The bearing is engaged, however, some damage to the Teflon coating on the pot bearing occurred when Superior was bringing the girder back down (see attached two pictures). The pictures were taken Saturday.

I discussed the damage with Superior on Sat. They proposed jacking and repairing after the entire deck is poured to avoid more damage now. I discussed with Mike this morning as well and he concurred to do repairs after the deck is poured.

I will send some pics to all.

Bryan

Bryan Rerko, P.E.  
Senior Project Engineer  
Parsons  
11221-7 St. Johns Industrial Parkway South  
Jacksonville FL 32246  
Phone: (904) 928-3500  
Fax: (904) 928-3771  
bryan.rerko@parsons.com

**From:** Ray, Chris [mailto:cray@hwlochner.com]  
**Sent:** Monday, April 21, 2008 1:46 PM  
**To:** Rerko, Bryan  
**Subject:** RE: 209278-1-52-01 Alignment Repair Response

How did the pour go today?

**Christian T. Ray, PE**  
Senior Structural Engineer  
H.W. Lochner, Inc.  
13577 Feather Sound Drive, Suite 600  
Clearwater, FL 33762  
(727) 572-7111 ext. 2729  
fax (727) 571-3371  
cell (919) 606-1765  
cray@hwlochner.com  
[www.hwlochner.com](http://www.hwlochner.com)

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. If you are NOT the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of



4-2-08  
10-14-2008

## Florida Department of Transportation

CHARLIE CRIST  
GOVERNOR

1109 South Marion Avenue  
Lake City, FL 32025

STEPHANIE C. KOPELOUSOS  
SECRETARY

October 7, 2008

Thomas W. Stoner, P.E.  
H.W. Lochner, Inc.  
13577 Feather Sound Drive, Suite 600  
Clearwater, FL 33769

Re: SR-9A / SR-202 (JTB Interchange)  
Financial Project ID 209278-1  
Contract No. C-6836  
Issue No. 2008-000885

Dear Mr. Stoner:

Project issues have been identified in the referenced contract that require immediate attention. The Department respectfully requests your assistance to fully evaluate the following issue and determine the appropriate course of action to continue contract administration:

**During the first deck pour, one of the two girders experienced uplift at the far end bent and was raised slightly off the bearing. During the course of lowering the girder the Teflon coating was damaged.**

Issues of this nature may impact costs and contract time; please give this your immediate and full consideration. Compensation for on-site participation and any additional engineering services may be billed as post-design services, unless the project issues are caused by Errors and Omissions. Please track all additional services separately for potential compensation and submit documentation with each invoice showing all hours and costs incurred addressing this issue. Thank you for your prompt assistance. Please respond within ten business days of receiving this letter. In your response please state if you concur that this is a designer error/omission; if you do not concur please explain.

Sincerely,

Richard Moss, P.E.  
District Consultant Project Management Engineer

[www.dot.state.fl.us](http://www.dot.state.fl.us)

this e-mail is strictly prohibited.

**From:** Rerko, Bryan [mailto:Bryan.Rerko@parsons.com]

**Sent:** Monday, April 21, 2008 1:44 PM

**To:** Ray, Chris

**Cc:** Box, Jack; Carrie Stanbridge; Rafiq Darji; Steven Plotkin; Schneider, Joan

**Subject:** 209278-1-52-01 Alignment Repair Response

Chris,

Please see attached response from Superior in regards to the bearing alignment repair at Bridge 720704 Pier 2. The response addresses welding, surface preparation, drainage, potential painting distress and certification of bearings.

The revised calculations were submitted previously and transmitted to you on April 16. Please review the attached and the previously transmitted calculations for approval.

Once all information has been reviewed, then a single response can be provided to Superior.

Thanks, Bryan

<<Sub 73(2)\_Response from Superior.pdf>>

Bryan Rerko, P.E.

Senior Project Engineer

Parsons

11221-7 St. Johns Industrial Parkway South

Jacksonville FL 32246

Phone: (904) 928-3500

Fax: (904) 928-3771

bryan.rerko@parsons.com



IMG\_9312.JPG IMG\_9313.JPG



## Florida Department of Transportation

CHARLIE CRIST  
GOVERNOR

1109 South Marion Avenue  
Lake City, FL 32025-5874

STEPHANIE C. KOPELOUSOS  
SECRETARY

February 17, 2009

Mr. Thomas W. Stoner, P.E.  
H.W. Lochner, Inc.  
13577 Feather Sound Drive, Suite 600  
Clearwater, FL 33769

Dear Mr. Stoner:

The purpose of this letter is to formalize the settlement agreement between H. W. Lochner, Inc. and the Department. This confirms the Department's formal acceptance of your payment of \$4,264.55 for full and complete settlement of the premium costs associated with E&O Issue No. 2008-000885 summarized as follows:

During the first deck pour, one of the two girders experienced uplift at the far end bent and was raised slightly off the bearing. During the course of lowering the girder the Teflon coating was damaged.

If you agree with the terms stated in this letter, please sign the enclosed duplicate and return to me, with a check made payable to the Florida Department of Transportation, thereby acknowledging your company's binding agreement to the terms hereof and constituting a mutually enforceable settlement agreement between both parties in these regards. Please respond within 30 days of receipt of this letter.

Thank you for your cooperation and commitment to the Department in bringing resolution to this issue.

Sincerely,

Robert L. Parks, P.E.  
Director of Planning and Production

#3

I accept the terms stated in this letter.

Mr. Thomas W. Stoner, P.E., H. W. Lochner, Inc.

**H.W. LOCHNER, INC.**  
20 NORTH WACKER DRIVE, SUITE 1200  
CHICAGO, IL 60606

**HARRIS N.A.**  
CHICAGO, ILLINOIS  
2-28-710

CHECK DATE

April 24, 2009

PAY

Four Thousand Two Hundred Sixty Four and 55/100 Dollars

TO

Florida Department of Transportation

AMOUNT

\$4,264.55

*Henry D. Lochner Jr.*  
AUTHORIZED SIGNATURE

⑈036627⑈ ⑆071000288⑆

3252483⑈

**H.W. LOCHNER, INC.**

3662

Invoice Number	Date	Voucher	Amount	Discounts	Previous Pay	Net Amount
2008-000885	4/17/09	0051168	4,264.55	0.00	0.00	4,264.55
Florida Department of Transportation						
1	1	005357	Totals	4,264.55	0.00	0.00
						4,264.55



District Two Correspondence, Samples # 2:



**Florida Department of Transportation**

**CHARLIE CRIST**  
GOVERNOR  
March 26, 2008

1109 South Marion Avenue  
Lake City, FL 32025-5874

**STEPHANIE C. KOPELOUSOS**  
SECRETARY

Thomas W. Stoner, P.E.  
H. W. Lochner, Inc.  
13577 Feather Sound Drive, Suite 600  
Clearwater, FL 33762

RE: SR 9A/SR 202 Interchange  
Financial Project ID 209278-1  
Contract No. C-76836  
Issue No. 2006-000125

#10

Dear Mr. Stoner:

The purpose of this letter is to formalize the settlement agreement between H.W. Lochner, Inc. and the Department. This confirms the Department's formal acceptance of your payment of \$10,762.60 for full and complete settlement of the premium costs associated with E&O Issue No. 2006-000125 summarized as follows:

Reinforcement steel bars with incorrect dimensions were specified in the contract plans (10P01 and 10P02). In order to provide minimum required concrete cover on the flared Pier Caps, the 10P01 and 10P02 reinforcement steel bars needed to be cut and re-tied for Pier 2 on Bridge No. 720702 and Piers 2 and 3 on Bridge No. 720704. In addition, revised length 10P01 and 10P02 bars were re-ordered and installed for Piers 2-6 on Bridge No. 720704 to accommodate the required concrete cover.

If you agree with the terms stated in this letter, please sign the enclosed duplicate and return to me, with a check made payable to the Florida Department of Transportation, thereby acknowledging your company's binding agreement to the terms hereof and constituting a mutually enforceable settlement agreement between both parties in these regards. Please respond within 30 days of receipt of this letter.

Thank you for your cooperation and commitment to the Department in bringing resolution to this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Parks".

Robert L. Parks, P.E.  
Director of Planning and Production

I accept the terms stated in this letter.

A handwritten signature in black ink, appearing to read "Thomas W. Stoner".

Thomas W. Stoner, P.E., H. W. Lochner, Inc.

Sample # 1; Copy of Check to DOT - D.2 from consultant firm:

30896

30896

**H.W. LOCHNER, INC.**  
20 NORTH WACKER DRIVE, SUITE 1200  
CHICAGO, IL 60606

**HARRIS N.A.**  
CHICAGO, ILLINOIS  
2-28-710

CHECK DATE April 17, 2008

10/10/08

**PAY** Ten Thousand Seven Hundred Sixty Two and 60/100 Dollars

**AMOUNT** \$10,762.60

**TO** Florida Department Of Transportation

*Henry D. Lochner Jr.*

MP

⑈030896⑈ ⑆071000288⑆

3252483⑈

**H.W. LOCHNER, INC.**

30896


Invoice Number	Date	Voucher	Amount	Discounts	Previous Pay	Net Amount
2006-000125	4/15/08	0045415	10,762.60			10,762.60
Florida Department of Transportat 1 1		Totals	10,762.60			10,762.60

DRY

Letter of notification from the D.2:

DRAFT

UNITED STATES POSTAL SERVICE  
A unique method of delivery kept by the U.S. Postal Service



## Florida Department of Transportation

CHARLIE CRIST  
GOVERNOR

Mail Station 2002  
1109 South Marion Avenue  
Lake City, FL 32025

STEPHANIE KOPELOUSOS  
INTERIM SECRETARY

March 15, 2007

Thomas W. Stoner, P.E.  
H.W. Lochner, Inc.  
13577 Feather Sound Drive, Suite 600  
Clearwater, FL 33769

Re: SR-9A / SR-202 (JTB Interchange)  
Financial Project ID 209278-1  
Contract No. C-6836  
Issue No. 2006-000252

Dear Mr. Stoner:

In preparing a construction Supplemental Agreement on the subject project, the Department determined that premium costs, as a result of Errors and Omissions in the construction plans and contract documents, exist in the amount of \$3,924.05. These premium costs do not add value to the project and should have been avoided. Further, the Department intends to pursue recovery of these costs. Please respond to this letter within ten (10) business days and state your position on the Department's assessment of costs and responsibility for the following Errors and Omissions:

**Additional clearing and grubbing at locations TR1 and TR 4, not shown in the original contract plans.**

Attached is a copy of the premium cost documentation.

Sincerely,



James M. Knight, P.E.  
District Consultant Project Management Engineer

# 4

www.dot.state.fl.us

mailed  
3/19/07

FDOT Comment, Lochner Response, and FDOT Follow-up Response

Follow-up Response was made June 16, 2004

5. FDOT - Temporary Ramp TR1 - See MOT Sheet 601, Selective Clearing and Grubbing Sheet 647 - Plans identify construction of a temporary ramp, TR1, to be constructed during Phase I which is located in an area designated as "To Remain Natural, No Clearing and Grubbing, No Equipment, Staging, Storing, or Dumping". Note - This issue was addressed in plan review comments and not corrected. This problem is present in both the concrete and steel alternatives.

LOCHNER RESPONSE: The plan's selective clearing and grubbing sheet can be revised to show this area as typical clearing and grubbing. The revised area 0.14 acres should be coordinated with the future Landscape Plans.

**FDOT Resident Office Response – This office concurs with Lochner's response. Plans to be modified to reflect this change.**

DRAFT

Sample # 2; Check to the FDOT - D.2



**H.W. LOCHNER, INC.**  
20 NORTH WACKER DRIVE, SUITE 1200  
CHICAGO, IL 60606

**HARRIS N.A.**  
CHICAGO, ILLINOIS  
2-28-710

27146

CHECK DATE August 10, 2007

PAY Three Thousand Nine Hundred Twenty Four and 05/100 Dollars

TO Florida Department of Transportation

AMOUNT \$3,924.05

*Henry D. Lochner Jr.*

Security Features Included. Details on back.

⑈027146⑈⑈071000288⑈

3252483⑈

**LOCHNER, INC.**

27146

Invoice Number	Date	Voucher	Amount	Discounts	Previous Pay	Net Amount
2006-000252	8/8/07	0041500	3,924.05			3,924.05
FLORIDA DEPARTMENT OF TR		Totals	3,924.05			3,924.05
1	1					

Sample #3; Check to the FDOT - D.2

3662

**H.W. LOCHNER, INC.**  
20 NORTH WACKER DRIVE, SUITE 1200  
CHICAGO, IL 60606

**HARRIS N.A.**  
CHICAGO, ILLINOIS  
2-28-710

CHECK DATE  
April 24, 2009

PAY  
TO

Four Thousand Two Hundred Sixty Four and 55/100 Dollars

Florida Department of Transportation

AMOUNT  
\$4,264.55

*Henry D. Lochner Jr.*  
AUTHORIZED SIGNATURE

⑈036627⑈ ⑈071000288⑈ 3252483⑈

H.W. LOCHNER, INC.

3662

Invoice Number	Date	Voucher	Amount	Discounts	Previous Pay	Net Amount
2008-000885	4/17/09	0051168	4,264.55	0.00	0.00	4,264.55
Florida Department of Transportation						
1	1	005357	Totals	4,264.55	0.00	4,264.55

2008

**XL DESIGN PROFESSIONAL**  
505 EAGLEVIEW BLVD. EXTON, PA 19341

ON BEHALF OF XL INSURANCE  
JPMORGAN CHASE BANK, N.A.  
CHICAGO, ILLINOIS 60670

No. 3012743

120 Days after date shown above.

PAY: One Million Six Hundred Fifty Seven Thousand Two Hundred Eighty Six and 20/100 Dollars 1,657,286.20

AMOUNT (Valid after 120 Days)

PARTICULARS OF FILE. (If incorrect, please return without alteration.)

INSURED Boyle Engineering Corporation	CO. NO. 11/28/2005	DATE OF LOSS/NOTICE DPR9406679	POLICY NO. 13504-2	FILE NO. TEHR.
NATURE OF PAYMENT - IN FULL SATISFACTION OF Settlement Payment.				PL. NO. L.C.N. NO.

Upon  
Acceptance  
Pay To The  
Order Of:

State of Florida Department of Transportation  
in care of  
Mr. Tom Roberts, Esq.  
Marshall, Dennehey, Warner, Coleman  
200 West Forsyth St., Suite 1400  
Jacksonville, FL 32202

TWO SIGNATURES REQUIRED IF OVER \$5000.

*Carol Barclay*

3012743 070000131

65651257 AUTHORIZED SIGNATURES

3012743

### XL Design Professional

In the US:  
520 Eagleview Blvd.  
Exton, PA 19341

In Canada:  
48 Yonge Street, Suite 400  
Toronto, ON, M5E 1G6

Claimant FDOT/State Route 207  
Insured Boyle Engineering Corporation  
Policy # DPR9406679  
Payee State of Florida Department of Transportation  
Invoice # Settlement Payment.

CHECK # 3012743  
DATE 11/6/2008  
AMOUNT \$1,657,286.2

Payment For Settlement Payment.

One Million Six Hundred Fifty Seven Thousand Two Hundred Eighty Six and 20/100 Dollars

3012743

### XL Design Professional

Claimant FDOT/State Route 207  
Mailed to Mr. Tom Roberts, Esq.  
Marshall, Dennehey, Warner, Coleman  
200 West Forsyth St., Suite 1400  
Jacksonville, FL 32202  
Insured Boyle Engineering Corporation  
Policy # DPR9406679  
Payee State of Florida Department of Transportation  
Invoice # Settlement Payment.

Payment For Settlement Payment.

CHECK # 3012743  
DATE 11/6/2008  
AMOUNT \$1,657,286.2

*Transmittal  
3214*



## Pending Premium Cost: D.2

2005-000000

A REGIONAL DEFENSE LITIGATION LAW FIRM

**MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN**

A PROFESSIONAL CORPORATION [www.marshalldennehey.com](http://www.marshalldennehey.com)

200 West Forsyth Street, Suite 1400 • Jacksonville, FL 32202  
(904) 358-4200 • Fax (904) 355-0018

Direct Dial: 4215  
Email: [rtroberts@mdwcg.com](mailto:rtroberts@mdwcg.com)

February 2, 2007

VIA ELECTRONIC MAIL  
AND U.S. MAIL

Terry L. Zinn, Esq.  
Florida Department of Transportation  
District Two Legal offices  
1109 South Marion Avenue  
Lake City, Florida 32025-5874

Re: XL (Boyle Engineering) av. FDOT/District 2  
Claim No. 13504  
Our File No. 24002.00159

Dear Mr. Zinn:

I am writing to you regarding a letter sent to me by Robert L. Parks, P.E., the Director of Planning and Production for District 2, dated January 25, 2007. In his letter Mr. Parks is demanding that Boyle Engineering Corporation undertake the cost of constructing facilities necessary to implement the "Mediation Settlement Agreement" that was negotiated by you, on behalf of the District, with the several defendants in the condemnation action you filed in St. Johns County regarding property along the State Road 207 right-of-way. As you will recall, you and I had in November, 2006 agreed that, if Boyle would undertake the responsibility of producing construction documents to implement the terms of the Settlement Agreement, the District would give Boyle time to investigate the allegation that Boyle's design of the project on State Road 207 was defective.

The specific terms of our agreement are set out in my letter to you of November 30, 2006. Immediately after my letter went out, Alan Soroory of Boyle Engineering, contacted Jim Knight, the District's Consultant Project Management Engineer for the State Road 207 work, and Boyle started to produce the construction documents, as promised. This was ongoing without objection until January 25, 2007 when Mr. Soroory was told by Mr. Knight that the District had changed its position. Mr. Knight then sent him Mr. Parks' letter, which I received several days later. I was particularly surprised by Mr. Parks' letter because I had been assured that the District Secretary had approved the agreement that you and I negotiated on behalf of Boyle and the District.

PENNSYLVANIA  
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Doverstown  
Erie  
Harrisburg  
King of Prussia  
Philadelphia  
Pittsburgh  
Scranton  
Williamsport  
NEW JERSEY  
Cherry Hill  
Roseland  
DELAWARE  
Wilmington  
FLORIDA  
Fort Lauderdale  
Jacksonville  
Orlando  
Tampa  
OHIO  
Akron



**MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN**

A PROFESSIONAL CORPORATION [www.marshalldennehey.com](http://www.marshalldennehey.com)

200 West Forsyth Street, Suite 1400 • Jacksonville, FL 32202  
(904) 358-4200 • Fax (904) 355-0019

Direct Dial: 904-358-4215  
Email: [rtroberts@mdwgc.com](mailto:rtroberts@mdwgc.com)

PENNSYLVANIA  
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Cherry Hill  
Roseland  
DELAWARE  
Wilmington  
OHIO  
Akron  
FLORIDA  
Ft. Lauderdale  
Jacksonville  
Orlando  
Tampa

March 14, 2008

Mr. James Knight, PE  
Florida Department of Transportation, District 2  
1109 S. Marion Avenue  
Lake City, Florida 32025



Re: XL (Boyle Engineering) av. FDOT/District II  
Claim No.: 14-XLDP-13504  
Our File No.: 24002.00159

Dear Mr. Knight:

I am writing to you following my February 29, 2008 letter to Robert L. Parks regarding Mr. Parks' February 13, 2008 letter referencing E&O Issues 2005000048 & 2005000066. In my letter, I advised Mr. Parks that as Boyle Engineering Inc.'s attorney, I need to gather documentation to put together an analysis of the costs being asserted by the Department in the referenced claims. In that regard, I have received some information from the District 2 General Counsel's office with regard to the so called "Rayonier Damages" totaling \$920,442.50.

There are four more elements of damages in Mr. Parks' February 13, 2008 letter for which I need documentation. Those are the "Premium Construction Cost" for the "Rayonier Settlement Agreement Implementation & Bring (sic) Ponds A2, A3 & A4 into Compliance", the "Construction Engineering and Inspection Item", the "Consultant Cost" item, and the FDOT Staff Cost. With regard to each of those items, we would like drawings, engineer's estimates and any written rationale the Department has for determining the amount that was asserted in the February 13, 2008 letter. With regard to the Consultant Cost, we would like to see the invoicing and the original contract with the consultant. With regard to the FDOT Staff Cost, we would like to have the documentation for those charges also.

Please understand, because of what little we know about the claims, this is an initial request, and I may have to ask you for more specific information at a later time. However, the sooner we get the information, the quicker we can get with the District's staff and enter into the promised settlement negotiations.

Robert L. Parks, P.E.

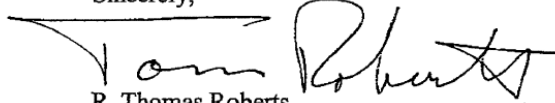
March 14, 2008

Page 2

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If you have any questions at all with regard to this request, please call me. I have written this letter with the understanding that I have the approval of Ralph Maxon, Esquire, District 2 Assistant General Counsel to contact you directly.

Sincerely,

  
R. Thomas Roberts

RTR/plb

cc: Ralph Maxon, Esquire, Assistant General Counsel, District 2  
Fred Adams, III, Boyle Engineering  
David Gwynn, Boyle Engineering

25/147592.v1

2008

**XL DESIGN PROFESSIONAL**  
505 EAGLEVIEW BLVD. EXTON, PA 19341

ON BEHALF OF XL INSURANCE

No. 3012743

120 Days after date shown above.

PAY: One Million Six Hundred Fifty Seven Thousand Two Hundred Eighty Six and 20/100 Dollars 1,657,286.20

AMOUNT (Valid after 120 Days)

PARTICULARS OF FILE. (If incorrect, please return without alteration.)

INSURED Boyle Engineering Corporation	CO. NO. 11/28/2005	DATE OF LOSS/NOTICE DPR9406679	POLICY NO. 13504-2	TERR.
NATURE OF PAYMENT - IN FULL SATISFACTION OF Settlement Payment.				RI. NO. L.C.N. NO.

Upon Acceptance Pay To The Order Of:

State of Florida Department of Transportation  
in care of  
Mr. Tom Roberts, Esq.  
Marshall, Dennehey, Warner, Coleman  
200 West Forsyth St., Suite 1400 -  
Jacksonville, FL 32202

TWO SIGNATURES REQUIRED IF OVER \$5000.

*Carol Barclay*

AUTHORIZED SIGNATURES

⑈ 3012743 ⑈ ⑆ 071000013 ⑆ 65651257 ⑈

3012743

# XL Design Professional

In the US:  
520 Eagleview Blvd.  
Exton, PA 19341

In Canada:  
48 Yonge Street, Suite 400  
Toronto, ON, M5E 1G6

Claimant FDOT/State Route 207  
Insured Boyle Engineering Corporation  
Policy # DPR9406679  
Payee State of Florida Department of Transportation  
Invoice # Settlement Payment.

CHECK # 3012743  
DATE 11/6/2008  
AMOUNT \$1,657,286.2

Payment For Settlement Payment.

One Million Six Hundred Fifty Seven Thousand Two Hundred Eighty Six and 20/100 Dollars

3012743

# XL Design Professional

Claimant FDOT/State Route 207  
Mailed to Mr. Tom Roberts, Esq.  
Marshall, Dennehey, Warner, Coleman  
200 West Forsyth St., Suite 1400  
Jacksonville, FL 32202  
Insured Boyle Engineering Corporation  
Policy # DPR9406679  
Payee State of Florida Department of Transportation  
Invoice # Settlement Payment.

Payment For Settlement Payment.

CHECK # 3012743  
DATE 11/6/2008  
AMOUNT \$1,657,286.2

DELUXE BUSINESS FORMS 1-800-328-0304

73247V

DOCUMENT HAS A TRUE DOCUCHECK™ WATERMARK AND CAN BE SEEN WHEN HELD TO LIGHT. THIS PAPER IS ALTERATION PROTECTED.

**LE ENGINEERING CORPORATION**  
 1501 Quail Street  
 Newport Beach, CA 92660-9998  
 (949) 476-3300

UNION BANK OF CALIFORNIA  
 SOUTH ORANGE COUNTY OFFICE  
 2001 MICHELSON DRIVE  
 IRVINE, CA  
 16-49/1220

**293233**

CHECK DATE  
 December 1, 2008

PAY  
 Ninety Two Thousand Seven Hundred Thirteen and 80/100

TO  
 THE  
 ORDER  
 OF  
 Florida Department of Transportation  
 3400 W. Commercial Blvd.  
 Ft. Lauderdale FL 33309-3421

AMOUNT  
 \$92,713.80

*[Signature]*  
 AUTHORIZED SIGNATURE

CHECK VOID AFTER 180 DAYS

THIS PAPER CONTAINS VISIBLE AND INVISIBLE FIBERS FACE AND BACK WHICH FLUORESCUE UNDER ULTRAVIOLET LIGHT.

⑈ 293233 ⑈ ⑆ 22000496⑆ 4558201024 ⑈

**BOYLE ENGINEERING CORPORATION**

**293233**

Invoice Number	Date	Voucher	Amount	Discounts	Previous Pay	Net Amount
Settlement Agreement	11/26/08	076885	92,713.80	0.00	0.00	92,713.80
Florida Department of Transportation 10210 4	02082	Totals	92,713.80	0.00	0.00	92,713.80

**BOYLE ENGINEERING CORPORATION**

**293233**

1,657,286.20  
 92,713.80  
 \$1,750,000

Transmittal  
 3214

The End

